

No. 13006

United States
Court of Appeals
for the Ninth Circuit.

Estate of RALPH R. HUESMAN, Deceased,
NURMA W. HUESMAN, FRED B. HUES-
MAN and THE FARMERS & MERCHANTS
NATIONAL BANK OF LOS ANGELES,
Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

FILED

SEP 26 1951

No. 13006

United States
Court of Appeals
for the Ninth Circuit.

Estate of RALPH R. HUESMAN, Deceased,
NURMA W. HUESMAN, FRED B. HUES-
MAN and THE FARMERS & MERCHANTS
NATIONAL BANK OF LOS ANGELES,
Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amended Petition	14
Ex. A—Notice of Deficiency.....	29
Answer	11
Appearances	1
Certificate of Clerk.....	146
Decision	140
Designation of Record.....	145
Docket Entries	3
Motion to Amend Petition.....	12
Notice of Filing of Petition for Review of De- cision of the Tax Court.....	144
Opinion	127
Petition	5
Petition to Review Decision of the Tax Court..	141
Points Relied on and Designation of Record....	148
Stipulation of Facts.....	32
Ex. A—Last Will and Testament of Ralph R. Huesman	38
B—Petition for Instructions to Testa- mentary Trustees	82

	INDEX	PAGE
Stipulation of Facts—(Continued):		
Ex. C—Petition for Partial Distribution...	91	
D—Order Instructing Testamentary Trustees to Make a Partial Dis- tribution	99	
E—Order and Decree of Partial Dis- tribution	103	
F—Income Tax Return for 1944.....	107	
G—Transcript of Entries from Orig- inal Entry Books.....	113	
H—Petition for Order to Borrow Money on Unsecured Note.....	115	
J—Income Tax Return for 1945.....	121	
Stipulation Re Exhibit I.....	123	
Ex. I—Order Authorizing Executors to Borrow Money on Unsecured Note..	124	

APPEARANCES

For Petitioner:

THOMAS R. DEMPSEY, ESQ.,
H. B. THOMPSON, ESQ.

For Respondent:

ROBERT H. KINDERMAN, ESQ.,
Special Attorney,
Bureau of Internal Revenue, for
CHARLES C. OLIPHANT, ESQ.,
Chief Counsel,
Bureau of Internal Revenue.

In The Tax Court of the United States

Docket No. 20164

Estate of RALPH R. HUESMAN, Deceased;
NURMA W. HUESMAN, FRED B. HUES-
MAN, and THE FARMERS & MERCHANTS
NATIONAL BANK OF LOS ANGELES,
Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1948

Sept. 2—Petition received and filed. Taxpayer noti-
fied. Fee paid.

Sept. 2—Copy of petition served on General Coun-
sel.

Sept. 28—Answer filed by General Counsel.

Sept. 28—Request for hearing in Los Angeles, Calif.,
filed by General Counsel.

Sept. 30—Notice issued placing proceeding on Los
Angeles calendar. Service of answer and
request made.

1950

Jan. 13—Hearing set March 20, 1950, Los Angeles,
Calif.

Mar. 20—Hearing had before Judge Arnold Rice,
on merits. Stipulation of facts filed at
hearing. Entry of appearance of H. B.
Thompson filed. Briefs due June 1, 1950.
Replies due June 26, 1950.

1950

May 17—Transcript of hearing 3/20/50 filed.

May 29—Brief filed by taxpayer. 6/2/50 Copy served.

June 1—Brief filed by General Counsel.

June 7—Motion for leave to file attached amended petition, amended petition lodged, filed by taxpayer.

June 7—Motion for leave to file attached amended petition, granted, amended petition filed.

June 8—Copy of motion and amended petition served on General Counsel.

July 5—Motion for leave to file the attached reply brief, brief lodged, filed by taxpayer. Granted. 7/10/50 Served.

1951

Jan. 17—Stipulation re exhibit I filed.

Mar. 29—Opinion rendered, Rice, J. Decision will be entered for the respondent. Copy served.

Mar. 30—Decision entered; Rice, J.; Div. 12.

June 4—Petition for review by U. S. Court of Appeals, 9th Circuit, filed by taxpayer with proof of service thereon.

June 18—Notice of filing petition for review with service thereon filed by taxpayer.

July 5—Designation of record filed by taxpayer with service thereon.

The Tax Court of the United States

Docket No. 20164

Estate of RALPH R. HUESMAN, Deceased;
NURMA W. HUESMAN, FRED B. HUES-
MAN, and THE FARMERS & MERCHANTS
NATIONAL BANK OF LOS ANGELES,
Executors,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau Symbols: LA:IT:90D:LHP, postmarked August 3, 1948), and as a basis of this proceeding alleges as follows:

(1) The petitioners, Nurma W. Huesman, Fred B. Huesman, and The Farmers & Merchant's National Bank of Los Angeles, are the duly appointed and acting executors of the Estate of Ralph R. Huesman, deceased. The return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California, Los Angeles, California.

(2) The notice of deficiency, a copy of which is attached and marked Exhibit A, was mailed to the petitioner on August 3, 1948.

(3) The taxes in controversy are income taxes for the period May 3, 1944, to April 30, 1945. The deficiency asserted is \$57,923.50.

(4) The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in disallowing as a deduction for amounts distributed under section 162(a) the sum of \$80,517.

(b) The Commissioner erred in disallowing as a deduction for amounts distributed under section 162(b) the sum of \$80,517.

(c) The Commissioner erred in disallowing as a deduction for amounts distributed under section 162(c) the sum of \$80,517.

(5) The facts upon which the petitioner relies as a basis of this proceeding are as follows:

(a) On May 3, 1944, Ralph R. Huesman died testate. At the time of his death he was President of Desmond's, a California corporation, conducting a merchandising business in that state. There was due and owing to him at that time, as compensation for services rendered in that office, the sum of \$80,517.

(b) By the terms of his will the testator made certain specific provisions for his wife and thereafter provided that all of the rest, residue, and remainder of the property in his estate be distributed to testamentary trustees upon five separate trusts. The pertinent provision of the will herein material is as follow:

(c) Loyola University of Los Angeles is a California corporation which at all times herein material qualified as a religious and educational corporation organized and operated exclusively for religious and educational purposes within the meaning of section 23(o) (2) of the Internal Revenue Code. The Regents' Fund of Loyola University of Los Angeles is a building fund constituting an asset of the corporation.

(d) On or about April 10, 1945, the executors of the Estate of Ralph R. Huesman, deceased, in that capacity and in their capacity as testamentary trustees, petitioned the Superior Court for the State of California in and for the County of Los Angeles, as the court exercising probate jurisdiction over said estate, for instructions and for an order of partial distribution. On April 30, 1945, said court entered its order and decree of partial distribution providing as follows:

* * *

(e) On April 30, 1945, said court also entered its order instructing testamentary trustees to make partial distribution, which order provided as follows:

* * *

(f) Thereafter on April 30, 1945, Desmond's paid to the executors of the Estate of Ralph R. Huesman, deceased, the sum of \$80,517 specifically as compensation or bonus for services rendered by the decedent to said corporation prior to his death; and on the same day the executors, pursuant to the

order entered by the Superior Court, paid to the testamentary trustees of the trust established by the decedent said sum of \$80,517; and on the same day the trustees of said testamentary trust, pursuant to the order entered by the Superior Court, paid to Loyola University of Los Angeles, Regents' Fund, said sum of \$80,517. At the time of receipt of said sum by the testamentary trustees and at the time of payment thereof by them, said sum of \$80,517 constituted the only asset of the trust estate.

(g) Thereafter and within the time provided by law the petitioners filed with the Collector of Internal Revenue for the Sixth District of California, a fiduciary income tax return for the Estate of Ralph R. Huesman, deceased, on Form 1041 for the fiscal period May 3, 1944, to April 30, 1945. Said return reported a gross income of \$131,140.13, deductions of \$87,828.22 and "amounts distributable to beneficiaries" listed on Schedule A of said return of \$80,517, leaving a net taxable income of \$7,311.22 and a tax liability of \$1,807.71, which was duly paid. Included within the gross income was the sum of \$80,517 received by the decedent's estate from Desmond's specifically as compensation or bonus for services rendered by the decedent prior to his death.

(h) At all times herein material petitioner has kept its books on a cash receipts and disbursements basis.

Wherefore, the petitioner prays that this court may hear the proceeding and determine that there

is no deficiency due from the petitioner for the period May 3, 1944, to April 30, 1945.

/s/ THOMAS R. DEMPSEY,
Counsel for Petitioner.

State of California,
County of Los Angeles—ss.

Fred B. Huesman and Nurma W. Huesman, being first duly sworn, depose and say: That they are respectively the duly qualified and acting executor and executrix of the Estate of Ralph R. Huesman, deceased, taxpayer named in the foregoing Petition and authorized to verify the same; that they have read the said Petition and know the contents thereof and that the same is true of their own knowledge except the matters which are therein stated to be upon information and belief and that as to these matters they believe it to be true.

/s/ FRED B. HUESMAN,
/s/ NURMA W. HUESMAN.

Subscribed and sworn to before me this 31st day of August, 1948.

[Seal] /s/ ARTHUR ROOT,
Notary Public in and for
Said County and State.

My Commission Expires Jan. 29, 1951.

State of California,
County of Los Angeles—ss.

R. C. Lemmon, being first duly sworn, deposes and says: That he is the Vice President of the Farmers and Merchants National Bank of Los Angeles, a corporation, duly qualified and acting as executor of the Estate of Ralph R. Huesman, deceased, taxpayer named in the foregoing Petition, and that he is authorized to make this verification for and on behalf of said corporation; that he has read the said Petition and knows the contents thereof, and that the same is true of his own knowledge, except the matters which are therein stated to be upon information and belief, and that as to those matters he believes it to be true.

/s/ R. C. LEMMON.

Subscribed and sworn to before me this 24th day of August, 1948.

[Seal] /s/ M. FREIS,

Notary Public in and for
Said County and State.

Received and Filed T.C.U.S. September 2, 1948.

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.
2. Admits that the notice of deficiency was mailed to the petitioner on August 3, 1948; denies the remaining allegations contained in paragraph 2 of the petition.
3. Admits the allegations contained in paragraph 3 of the petition.
- 4.(a), (b) and (c). Denies that allegations of error contained in subparagraphs (a) (b) and (c) of paragraph 4 of the petition.
5. (a) Admits that Ralph R. Huesman died on May 3, 1944. Denies the remaining allegations contained in subparagraph (a) of paragraph 5 of the petition.
(b) to (f), inclusive. Denies the allegations contained in subparagraphs (b) to (f), inclusive, of paragraph 5 of the petition.
(g). Admits the allegations contained in the first sentence of subparagraph (g); denies the remaining allegations contained in subparagraph (g) of paragraph 5 of the petition.

(h). Denies the allegations contained in subparagraph (h) of paragraph 5 of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ **CHARLES OLIPHANT, ECC.,**
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel;

E. C. CROUTER,
R. H. KINDERMAN,
Special Attorneys,
Bureau of Internal Revenue.

Received and Filed T.C.U.S. September 28, 1948.

[Title of Tax Court and Cause.]

MOTION TO AMEND PETITION

The above-named petitioner hereby moves to amend its petition, filed in the above-entitled matter on September 2, 1948, as set forth in the amended petition which is attached hereto.

The reason for amending said petition is based upon the fact that the deficiency referred to therein

with accrued interest thereon was paid on behalf of the petitioner by The Farmers & Merchants National Bank of Los Angeles on June 7, 1949, after the mailing of the notice of deficiency and after the filing of said petition. The counsel for the petitioner was not informed of the fact of said payment until on or about May 19, 1950.

Dated May 26, 1950.

/s/ THOMAS R. DEMPSEY,
Counsel for Petitioner.

The petitioner's motion to file amended petition is not opposed.

/s/ CHARLES OLIPHANT, PHN.,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel;

E. C. CROUTER,
R. H. KINDERMAN,
Special Attorneys,
Bureau of Internal Revenue.

[Stamped]: Granted June 7, 1950. William Arnold, Judge.

Received and Filed T.C.U.S. June 7, 1950.

Served June 8, 1950.

[Title of Tax Court and Cause.]

AMENDED PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau Symbols: LA:IT:90D:LHP, postmarked August 3, 1948), and as a basis of this proceeding alleges as follows:

(1) The petitioners, Nurma W. Huesman, Fred B. Huesman and The Farmers & Merchants National Bank of Los Angeles, are the duly appointed and acting executors of the Estate of Ralph R. Huesman, deceased. The return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California, Los Angeles, California.

(2) The notice of deficiency, a copy of which is attached and marked Exhibit A, was mailed to the petitioner on August 3, 1948.

(3) The taxes in controversy are income taxes for the period May 3, 1944, to April 30, 1945. The deficiency asserted is \$57,923.50.

(4) The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in disallowing as a deduction for amounts distributed under section 162(a) the sum of \$80,517.

(b) The Commissioner erred in disallowing as

a deduction for amounts distributed under section 162(b) the sum of \$80,517.

(c) The Commissioner erred in disallowing as a deduction for amounts distributed under section 162(c) the sum of \$80,517.

(5) The facts upon which the petitioner relies as a basis of this proceeding are as follows:

(a) On May 3, 1944, Ralph R. Huesman died testate. At the time of his death he was President of Desmond's, a California corporation, conducting a merchandising business in that state. There was due and owing him at that time, as compensation for services rendered in that office, the sum of \$80,517.

(b) By the terms of his will the testator made certain specific provisions for his wife and thereafter provided that all of the rest, residue and remainder of the property in his estate be distributed to testamentary trustees upon five separate trusts. The pertinent provision of the will herein material is as follows:

“5. The Trustees shall pay and distribute a sum of money equal to ten per cent (10%) of the Trusteed Property as follows: To my friend Dr. Henry M. Rooney, and if he be deceased to his wife, Mrs. May Rooney, the sum of Two Thousand Dollars (\$2,000.00); to my loyal secretary and employee Leonora Zinner, the sum of Two Thousand Dollars (\$2,000.00); and to Mrs. Gregory Haran, my former secretary, who rendered very loyal service to me, the sum of Two Thousand Dollars (\$2,000.00);

which said respective sums shall be distributed as soon as reasonably possible, and the balance of said sum of money shall be paid and distributed by the trustees to the following named organizations and in the proportions as follows: To Loyola University of Los Angeles, Regents' Fund, five-tenths (5/10ths); to Catholic Foreign Missions Society of America, Inc., one-tenth (1/10th); to Little Sisters of the Poor, at present located at 2700 East First Street, Los Angeles, California, one-tenth (1/10th); and three-tenths (3/10ths) to the Employees' Retirement Plan of Desmond's, a California corporation, with its principal place of business at 616 South Broadway, Los Angeles, California, for the benefit of its employees, provided, however, that at the time of my death I am the owner of a majority of the capital stock of Desmond's, and provided further, that such Employees' Retirement Plan of Desmond's at such time is in existence, and said three-tenths shall be added to the share in said Employees' Retirement Plan of Desmond's for the benefit of those persons in the employ of Desmond's prior to the effective date of said Employees' Retirement Plan of Desmond's and entitled to share thereunder. Such conversion of Trusteed Property into money and payments and distributions made to said organizations shall be made by the Trustees within five (5) years after distribution to the Trustees and shall be made at such times and in such amounts as may be convenient for the Trustees in consideration of the condition of the Trust Estate, and the Trustees may exercise in their sole

discretion as to when and in what amounts such payments and distributions shall be made within said period of five (5) years. In the event that for any reason any of the provisions in this paragraph shall become inoperative, then the portion and the percentage of such sum as to which it shall be inoperative shall be added by the Trustees to the principal of the Trust herein provided for my wife, Nurma W. Huesman, or if she nor my daughter Carol Anne Huesman Marcato be then living, such portion shall go and be distributed equally to my brother Fred H. Huesman and my sister Mathilda Josephine Huesman Doll, and in the event my said brother shall die before distribution to him of any such portion to which he is entitled, such portion shall go and be distributed to his children as follows: three-fourths ($\frac{3}{4}$) to Fred B. Huesman and one-fourth ($\frac{1}{4}$) to Mary Gerard Huesman, except that if either of said children shall die before distribution, the share that would otherwise have gone to said child shall be distributed to the lawful descendants of said child; and in the event my said sister shall die before distribution to her of any such portion to which she is entitled, such portion shall go and be distributed to her living and lawful descendants per stirpes, provided, however, that if there be no person qualified to take as herein provided, such share shall be distributed to my heirs at law in accordance with the laws of succession of the State of California."

(c) Loyola University of Los Angeles is a California corporation which at all times herein mate-

rial qualified as a religious and educational corporation organized and operated exclusively for religious and educational purposes within the meaning of section 23(o) (2) of the Internal Revenue Code. The Regents' Fund of Loyola University of Los Angeles is a building fund constituting an asset of the corporation.

(d) On or about April 10, 1945, the executors of the Estate of Ralph R. Huesman, deceased, in that capacity and in their capacity as testamentary trustees, petitioned the Superior Court for the State of California in and for the County of Los Angeles as the court exercising probate jurisdiction over said estate for instructions and for an order of partial distribution. On April 30, 1945, said court entered its order and decree of partial distribution providing as follows:

“Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, Executors under the Will of Ralph R. Huesman, Deceased, having filed herein on the 10th day of April, 1945, their petition and Supplement to Petition praying for an order allowing and distributing to themselves as Trustees under the Will of Ralph R. Huesman, Deceased, a certain portion of said Estate to which the Trustees are entitled under the terms of the Will, and directing said Executors to deliver said property to themselves as said Trustees, and further directing said Trustees to deliver said property to Loyola University, Regents Fund, as the ultimate beneficiary of said property under said trust; and said petition this day

coming on regularly to be heard, proof having been made to the satisfaction of the Court, the Court finds that notice of the hearing of said petition has been regularly given for the period and in the manner required by Section 1200 of the Probate Code; and no person appearing to contest the same;

“The Court, after hearing the evidence, finds that all the allegations of said petition and Supplement to Petition are true; that among the assets of said Estate and constituting a part of the corpus thereof, is an item of compensation due the decedent in the form of a bonus from Desmond’s, a corporation, in the sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00); that among the claims filed and allowed is that of Desmond’s, a corporation, amounting in gross to One Hundred Eleven Thousand Seventy-nine 6/100 Dollars (\$111,079.06); that under an order authorizing said Executors to borrow money on an unsecured note, granted by this Court on this day, the Executors will pay to Desmond’s, a corporation, the full amount of decedent’s aforesaid indebtedness plus interest in the total amount of One Hundred Eleven Thousand Seventy-nine 6/100 Dollars (\$111,079.06) and will receive from Desmond’s, the sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00), specifically as compensation due to the decedent in the form of a bonus at the time of his death; that as a result of said mutual payments, Desmond’s, claim against the Estate will thereby be fully paid; and the amount of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) received specifically as compensation due to the decedent in the form of a bonus at the time of

his death, shall become available for distribution;

“That by the terms of the Will, the net estate, being in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00), is to be distributed to Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as trustees under said Will of Ralph R. Huesman, Deceased; that one of the beneficiaries of said testamentary trust is Loyola University of Los Angeles, Regents Fund, which is entitled to a sum of money equal to approximately Five Per Cent (5%) of the trustee property, amounting to approximately Ninety-eight Thousand Dollars (\$98,000.00); that said Loyola University is an educational institution located in Los Angeles, California; that said institution is in need of cash funds and desires a partial distribution of the bequest in its favor under decedent’s Will in the amount of said bonus, to wit, the sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00); that the State Comptroller through the assistant Inheritance Tax Attorneys, has consented to the granting of the petition for partial distribution, without first having the California Inheritance Taxes determined and paid; that the Estate is but little indebted; that the legacy or share of the Estate set forth above may be distributed to said Trustees and then to Loyola University, Regents’ Fund, as the institution ultimately entitled thereto, without loss to the creditors or injury to the Estate or any person interested therein; that sufficient assets will remain in the hands of the Executors to pay any

debts of administration; that it is unnecessary that the legatee give a bond;

“It Is Therefore Ordered and Decreed that Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as Executors of the Estate of Ralph R. Huesman, Deceased, upon receiving said certain sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) from Desmond’s, a corporation, specifically as compensation due to the decedent in the form of a bonus at the time of his death, shall deliver said specific sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) to Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as Trustees under the Will of Ralph R. Huesman, Deceased; and said Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as said Trustees under the Will of Ralph R. Huesman, Deceased, shall distribute such specific sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) to Loyola University of Los Angeles, Regents Fund, in partial satisfaction of its bequest under the Will of said Ralph R. Huesman, Deceased; and that no bond shall be required by reason of any distribution order herein made.”

(e) On April 30, 1945, said court also entered its order instructing testamentary trustees to make partial distribution, which order provided as follows:

“Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los An-

geles, being the Executors under the Will of Ralph R. Huesman, Deceased, and also being the persons named as Trustees in said Will of Ralph R. Huesman, Deceased, having filed herein on the 10th day of April, 1945, their petition praying for an order instructing, requiring and directing that a certain sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) should be distributed to Loyola University of Los Angeles, Regents Fund, in partial satisfaction of its bequest under Will of Ralph R. Huesman, Deceased, and said petition this day coming on regularly to be heard, proof having been made to the satisfaction of the Court, the Court finds that notice of the hearing on said petition has been regularly given for the period and in the manner required by it under Sections 1120 and 1200 of the Probate Code; and no person appearing to contest the same;

“The Court after hearing the evidence, finds that all the allegations of said petition are true; that Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, are the Trustees appointed by the Will of Ralph R. Huesman, Deceased; that said persons have accepted the trusts created and declared in said Will; that among the assets of said Estate and constituting a part of the corpus thereof, is an item of compensation due the decedent in the form of a bonus from Desmond’s, a corporation, in the sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517); that among the claims filed and allowed is that of Desmond’s, a corporation, amount-

ing in gross to One Hundred Eleven Thousand Seventy-nine 6/100 Dollars (\$111,079.06); that under an order authorizing said Executors to borrow money on an unsecured note, granted by this Court on this day, the Executors will borrow One Hundred Ten Thousand Dollars (\$110,000.00), and pay to Desmond's, a corporation, the full amount of decedent's aforesaid indebtedness plus interest in the total amount of One Hundred Eleven Thousand Seventy-nine 6/100 Dollars (\$111,079.06), and will receive from Desmond's, the sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00), specifically as compensation due to the decedent in the form of a bonus at the time of his death; that as a result of said mutual payments, Desmond's claim against the Estate will thereby be fully paid; and the amount of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00), received specifically as compensation due to the decedent in the form of a bonus at the time of his death, shall become available for distribution;

"That by the terms of the Will, the net estate, being in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00), is to be distributed to Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as Trustees under the Will of Ralph R. Huesman, Deceased; that one of the beneficiaries of said testamentary trust is Loyola University of Los Angeles, Regents' Fund, which is entitled to a sum of money equal to approximately Five Per Cent (5%) of the trustee property, amounting to approximately

Ninety-Eight Thousand Dollars (\$98,000.00); that said Loyola University is an educational institution located in Los Angeles California; that said institution is in need of cash funds and desires a partial distribution of the bequest in its favor under decedent's Will in the amount of said bonus, to wit, the sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00); that the State Comptroller through the Assistant Inheritance Tax Attorneys, has consented to the granting of the petition for partial distribution, without first having the California Inheritance Taxes determined and paid;

“That under an order and decree of partial distribution granted by this Court on this day, the Executors, upon receiving said sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) from Desmond's, a corporation, specifically as compensation due the decedent in the form of a bonus at the time of his death, shall deliver said specific sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) to Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as Trustees under the Will of Ralph R. Huesman, Deceased; that said sum constitutes the sole estate of said testamentary trust; that there are no liabilities to any creditors under said trust; that the said legacy or share of the trust estate set forth above may be distributed to Loyola University, Regents' Fund, as the institution entitled thereto, without loss to the creditors or injury to the trust estate, or any person interested therein;

and that it is unnecessary that the legatee give bond;

“It Is Therefore Ordered and Decreed that the said sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00), received by Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as Executors of the Estate of Ralph R. Huesman, Deceased, from Desmond’s, a corporation, specifically as compensation due to the decedent in the form of a bonus at the time of his death, and delivered under order of this Court, as a specific sum to Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as Trustees under the Will of Ralph R. Huesman, Deceased, shall be delivered as a specific sum to Loyola University of Los Angeles, Regents’ Fund, in partial satisfaction of its bequest under the Will of Ralph R. Huesman, Deceased; and that no bond shall be required by reason of any distribution granted hereunder.”

(f) Thereafter on April 30, 1945, Desmond’s paid to the executors of the Estate of Ralph R. Huesman, Deceased, the sum of \$80,517 specifically as compensation or bonus for services rendered by the decedent to said corporation prior to his death; and on the same day the executors, pursuant to the order entered by the Superior Court, paid to the testamentary trustees of the trust established by the decedent said sum of \$80,517; and on the same day the trustees of said testamentary trust, pursuant to the order entered by the Superior Court, paid

to Loyola University of Los Angeles, Regents' Fund, said sum of \$80,517. At the time of receipt of said sum by the testamentary trustees and at the time of payment thereof by them, said sum of \$80,517 constituted the only asset of the trust estate.

(g) Thereafter and within the time provided by law the petitioners filed with the Collector of Internal Revenue for the Sixth District of California a fiduciary income tax return for the Estate of Ralph R. Huesman, deceased, on Form 1041 for the fiscal period May 3, 1944, to April 30, 1945. Said return reported a gross income of \$131,140.13, deductions of \$87,828.22 and "amounts distributable to beneficiaries" listed on Schedule A of said return of \$80,517, leaving a net taxable income of \$7,311.22 and a tax liability of \$1,807.71, which was duly paid. Included within the gross income was the sum of \$80,517 received by the decedent's estate from Desmond's specifically as compensation or bonus for services rendered by the decedent prior to his death.

(h) Thereafter, on June 7, 1949, The Farmers & Merchants National Bank of Los Angeles, one of the executors of the Estate of Ralph R. Huesman, deceased, mailed to the Collector of Internal Revenue, Sixth Collection District, Los Angeles, California, a check in the sum of \$71,459.35 along with a letter of transmittal explaining that said check was to cover the income tax deficiency of \$57,923.50 assessed against the Estate of Ralph R. Huesman for the fiscal year ended April 30, 1945, and accrued interest on the deficiency of \$13,525.85

to the date of the letter. A copy of this letter was returned, as requested, to The Farmers & Merchants National Bank of Los Angeles bearing the following stamp and signature: "Received with remittance June 7, 1949, Coll. Int. Rev. Los Angeles, Cal., Teller V, (S) A. N. Verner."

(i) At all times herein material petitioner has kept its books on a cash receipts and disbursements basis.

Wherefore, the petitioner prays that the court may hear the proceeding and determine that there was no deficiency due from the petitioner for the period May 3, 1944, to April 30, 1945; that the petitioner has made an overpayment of its tax for the fiscal year ended April 30, 1945, in the amount of \$71,459.35, and that said overpayment of \$71,459.35, was paid on June 7, 1949, and after the mailing of the notice of deficiency on August 3, 1948.

/s/ THOMAS R. DEMPSEY,
Counsel for Petitioner.

State of California,
County of Los Angeles—ss.

Fred B. Huesman and Nurma W. Huesman, being first duly sworn, depose and say: That they are respectively the duly qualified and acting executor and executrix of the Estate of Ralph R. Huesman, deceased, taxpayer named in the foregoing Amended Petition and authorized to verify the same; that they have read the said Amended Petition and know the contents thereof and that

the same is true of their own knowledge except the matters which are therein stated to be upon information and belief and that as to these matters they believe it to be true.

/s/ FRED B. HUESMAN,

/s/ NURMA W. HUESMAN.

Subscribed and sworn to before me this 31st day of May, 1950.

[Seal] /s/ ARTHUR ROOT,
 Notary Public in and for
 Said County and State.

My Commission Expires Jan. 29, 1951.

State of California,
County of Los Angeles—ss.

W. D. Baker, being first duly sworn, deposes and says: That he is the Vice President of the Farmers & Merchants National Bank of Los Angeles, a corporation duly qualified and acting as executor of the Estate of Ralph R. Huesman, deceased, taxpayer named in the foregoing Amended Petition, and that he is authorized to make this verification for and on behalf of said corporation; that he has read the said Amended Petition and knows the contents thereof and that the same is true of his own knowledge, except the matters which are therein

stated to be upon information and belief, and that as to those matters he believes it to be true.

/s/ W. D. BAKER.

Subscribed and sworn to before me this 31st day of May, 1950.

[Seal] /s/ M. FREIS,

Notary Public in and for
Said County and State.

EXHIBIT A

Treasury Department
Internal Revenue Service
417 South Hill Street
Los Angeles 13, California

(Seal)

Office of Internal Revenue Agent in Charge
Los Angeles Division.

LA :IT :90D :LHP

Estate of Ralph R. Huesman, Deceased,
Nurma W. Huesman, Fred B. Huesman, and
The Farmers & Merchants National Bank of Los
Angeles, Executors.

401 South Main Street,
Los Angeles 13, California.

Gentlemen:

You are advised that the determination of your income tax liability for the taxable year May 3, 1944 to April 30, 1945 disclosed a deficiency of \$57,923.50, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner;

By /s/ GEORGE D. MARTIN,
Internal Revenue Agent
in Charge.

LHP:vmc

Enclosures:

Statement

Form of waiver

EXHIBIT A
STATEMENT

LA :IT :90D :LHP

Estate of Ralph R. Huesman, Deceased

Nurma W. Huesman, Fred B. Huesman, and
The Farmers & Merchants National Bank of Los Angeles
Executors401 South Main Street
Los Angeles 13, CaliforniaTax Liability for the Taxable Year
May 3, 1944, to April 30, 1945

Deficiency

Income tax \$57,923.50

In making this determination of your income tax liability careful consideration has been given to the report of examination, a copy of which was sent to you on September 2, 1947, to your protest dated September 12, 1947, to your supplemental protest dated March 22, 1948, and to the statements made at the conferences held.

A copy of this letter and statement has been mailed to your representative, Mr. Thomas R. Dempsey, 1104 Pacific Mutual Building, Los Angeles 14, California, in accordance with the authorization contained in the power of attorney executed by you.

Adjustments to Net Income

Net income as disclosed by return..... \$ 7,311.22

Unallowable deductions:

(a) "Other deductions" decreased..... \$ 845.59
(b) Amount distributable to
beneficiaries disallowed 80,517.00 81,362.59

Net income adjusted..... \$88,673.81

Explanation of Adjustments

(a) Included in gross income in your return is the amount of \$80,517.00 representing a bonus of that amount which was included in the gross estate of decedent, and, under "other deductions," a deduction of \$37,359.89 is claimed representing the federal estate tax attributable to such bonus. It has been determined that the correct amount of the deduction allowable on account of such federal estate tax under section 126 of the Internal Revenue Code, is \$36,514.30, a decrease of \$845.59.

(b) The deduction of \$80,517.00 claimed for "amount distributable to beneficiaries" is disallowed as not constituting a proper deduction under the provisions of section 162 of the Internal Revenue Code.

Computation of Tax

Net income adjusted.....	\$88,673.81
Less: Exemption	500.00
Surtax net income.....	\$88,173.81
Surtax	\$57,086.00
Net income adjusted.....	\$88,673.81
Less: Exemption	500.00
Net income subject to normal tax.....	\$88,173.81
Normal tax at 3%.....	\$ 2,645.21
Correct income tax liability.....	\$59,731.21
Income tax liability shown on return, account No.	
July 355009—1945	1,807.71
Deficiency of income tax.....	\$57,923.50

Lodged and filed T.C.U.S. June 7, 1950.

[Title of Tax Court and Cause.]

STIPULATION

It is hereby stipulated and agreed by and between the parties hereto through their respective counsel as follows:

1. On May 3, 1944, Ralph R. Huesman died testate, a resident of the State of California. At the time of his death he was President of Desmond's, a California corporation, which was conducting a retail merchandising business in Southern California. There was due and owing to him from said corporation at the time of his death the sum of \$80,517.00 as compensation for services rendered as President of Desmond's up to the date of his death.

2. By Order of the Superior Court of Los An-

geles entered June 14, 1944, Decedent's Last Will and Testament was therein admitted to probate. The net value of the said Ralph R. Huseman's estate exceeded \$250,000.00, and his wife, Nurma W. Huseman, who survived him, elected to take under the Decedent's Will. A copy of said Will is attached hereto, marked Exhibit A, and by reference made a part hereof.

3. By the applicable terms of said Ralph R. Huesman's Will, he devised and bequeathed his residuary estate to trustees to make certain specified distributions. Among the legatees to whom distribution was thus made, pursuant to said Will, was Loyola University of Los Angeles, Regents' Fund. At all times herein material said University was included in the cumulative list of organizations, contributions to which were ruled by the Commissioner of Internal Revenue deductible under sections 23(o) and 23(q) of the Internal Revenue Code. The Regents' Fund is the building fund of said University and is used solely for the University in its building expansion program. Said fund is administered by the President of the University, and checks drawn thereon are signed by him or by the Treasurer.

4. On or about April 10, 1945, the Executors of the Estate of Ralph R. Huesman, Deceased, in that capacity and in their capacity as testamentary trustees, petitioned the Superior Court for the State of California in and for the County of Los Angeles, as the court exercising probate jurisdiction of said

Estate, for instructions. A copy of said Petition is attached hereto, marked Exhibit B, and by reference made a part hereof. Concurrently therewith said Executors and testamentary trustees filed a Petition for an Order of Partial Distribution. Said Petition is attached hereto, marked Exhibit C, and by reference made a part hereof. Also therewith said Executors filed with said Court a petition for order to borrow money on unsecured note. A copy of said Petition is attached hereto marked Exhibit H and by reference made a part hereof. No objection was made to any of said Petitions by any party or person on whom notice of the filing of said Petition was served. The hearing on all of said Petitions was had on April 30, 1945, was concurrent and was not contested by any party on whom notice was served. Notices of filing of said Petitions and of all others herein mentioned filed with said Superior Court were served upon the following:

Nurma W. Huesman—10811 Ambazac Way, Bel Air, Los Angeles 24, California.

Carol Ann Huesman Marcato—24 East 82nd St., New York, New York.

Fred H. Huesman—728 E. Windsor Road, Glendale, California.

Mathilda Josephine Huesman Doll—1219 Viscano Drive, Glendale, California.

Frank F. Huesman—915 East Lomita Avenue, Glendale, California.

Fred B. Huesman—616 South Broadway, Los Angeles, California.

Marcellus Doll—714 North Linden Drive, Beverly Hills, California.

Mary Gerard Huesman—728 East Windsor Road, Glendale, California.

Dr. Henry M. Rooney—832 South Windsor Road, Los Angeles, California.

Mrs. May Rooney—832 South Windsor Road, Los Angeles, California.

Leonora Zinner—1604 Fremont Avenue, South Pasadena, California.

Mrs. Gregory Haran—456 Redwood Road, Box #456, Corte Madera, California.

5. On April 30, 1945, said Court entered its Order instructing testamentary trustees to make partial distribution. A copy of said Order is attached hereto, marked Exhibit D, and by reference made a part hereof. Concurrently therewith said Court also entered an Order and Decree of Partial Distribution. A copy of said Order is attached hereto, marked Exhibit E, and by reference made a part hereof. Concurrently therewith said Court also entered an Order authorizing Executors to borrow money on unsecured Note. A copy of said Order is attached hereto marked Exhibit I and by reference made a part hereof. Entry by the Superior Court of said Order and of all others herein mentioned was not contested by any party to whom notice was given in this action.

6. Thereafter on April 30, 1945, Desmond's paid to the Executors of the Estate of Ralph R. Huesman, Deceased, the sum of \$80,517.00 as compensa-

tion or bonus for services rendered by the Decedent to said corporation up to the date of his death. Thereafter on the same day the Executors, pursuant to the aforesaid Order of Partial Distribution entered by the Superior Court, paid to the testamentary trustees of the aforesaid testamentary trust established by the Decedent the sum of \$80,517.00. Thereafter on the same day the trustees of said testamentary trust, pursuant to the Order entered by said Superior Court instructing them to make partial distribution, paid to Loyola University of Los Angeles, Regents' Fund, the sum of \$80,517.00. At the time of the receipt of the sum of \$80,517.00 by the testamentary trustees as aforesaid and at the time of distribution thereof by them as aforesaid, the sum of \$80,517.00 constituted the only cash asset of the trust estate. The only other then existing asset of said trust estate was the right thereof to receive the trust corpus from the decedent's estate, the petitioner herein.

7. Thereafter and within the time provided by law the Petitioner filed with the Collector of Internal Revenue for the Sixth District of California, a fiduciary income tax return for the Estate of Ralph R. Huesman, Deceased. A copy of said return is attached hereto, marked Exhibit F, and by this reference made a part hereof.

8. At all times herein material Petitioner kept its books and filed its Federal income tax returns on a cash receipts and disbursements basis.

9. The original assets of the petitioner were set

up on the books of account as of May 3, 1944, as shown by the journal entry of said date, copy of which appears on page 1 of Exhibit G, attached hereto, and by reference made a part hereof. The remainder of said Exhibit G consists of copies of all journal entries involving the said sum of \$80,517.00 appearing on the books of account of the petitioner and of the testamentary trust hereinabove referred to. Said Exhibit G also contains copies of the explanations on said books accompanying said journal entries and, in addition, the titles of the ledger accounts involved, which are designated by number in said journal entries.

10. The sum of \$110,000.00 was borrowed by the petitioner from The Farmers and Merchants National Bank of Los Angeles on April 30, 1945, on a three-month unsecured note of the petitioner. On July 30, 1945, the sum of \$110,000.00 was repaid by check of the petitioner to said bank in payment of said note, together with the interest on said note of \$556.11 to date of payment. Said sum of \$110,000.00 so borrowed was applied by the petitioner to the payment made to Desmond's on the Claim of Desmond's referred to in paragraph VI of Exhibit B, hereof.

11. The funds used for repayment of said loan were acquired by the petitioner from distributions made by Desmond's in complete liquidation of said corporation in exchange for stock of said corporation held by the estate.

12. At all times herein material, the decedent, Ralph R. Huesman, kept his books and filed his federal income tax returns on a cash receipt and disbursements basis of accounting.

13. Subject to the objection of respondent that the facts herein in this paragraph agreed to are not relevant or material, it is hereby stipulated and agreed that within the time allowed by law for the filing thereof the testamentary trustees under the will of the said Ralph R. Huesman, Deceased, filed with the Collector of Internal Revenue for the Sixth Collection District of California a fiduciary income tax return (Form 1041) for the fiscal year ended April 30, 1945. A copy of said return is attached hereto, marked Exhibit J and by this reference made a part hereof.

DEMPSEY, THAYER,
DEIBERT & KUMLER.

By /s/ H. B. THOMPSON,
Of Counsel.

/s/ CHARLES OLIPHANT, ECC
Chief Counsel, Bureau of
Internal Revenue.

EXHIBIT A

Last Will and Testament of Ralph R. Huesman

I, Ralph R. Huesman, a resident of Los Angeles, California, being of sound mind and memory and not acting under duress, menace, fraud, or the undue

influence of any person, do make, publish and declare this my Last Will and Testament, hereby revoking any and all Wills and Codicils by me at any time heretofore made.

Article I.

I direct my Executors to pay all my just debts and funeral expenses as soon as practicable after my death, and to pay out of the principal of my general estate all valid estate, inheritance, transfer and succession taxes which may be imposed or assessed during the period of administration on my property or estate or on the transmission thereof by my death or on any bequest or interest hereunder.

Article II.

I declare that I am married and that my wife is Nurma W. Huesman, and that I have only one child now living, namely, my daughter, Carol Anne Huesman Marcato.

Article III.

I declare that all my property in which, to the date hereof, I have any interest is community property. It is my intention hereby to dispose of the entire community [1*] property, real and personal, and that my wife shall elect whether she will take under this Will or whether she shall take the rights in connection with said community property given

*[The signature of Ralph R. Huesman appears in the left hand margin of each page of the original Last Will and Testament. Figures in brackets in this printed copy appear at the foot of the original pages and follow the last word appearing on each page of the original.]

her by law. Should she elect to take any of the rights to said community property given her by law, then she shall take nothing under this Will and the provisions herein contained in her favor shall be cancelled.

Nothing herein shall be construed as requiring my wife to elect between taking under the Will and her rights as conferred by law to make application for and receive family allowance and a probate homestead, and the selection by my wife of a probate homestead and any application for, and the receipt of, a family allowance shall not be deemed an election by my wife to take her community rights or as an election not to take under the provisions of this Will.

Article IV.

I am so making the trust provisions hereinafter set forth with reference to my wife, because I am carrying insurance in her favor as beneficiary, of a substantial amount. If my wife shall elect to take under the provisions of this Will and in the event this insurance should lapse, or, if for any reason my wife shall receive less than Twenty-five Thousand Dollars (\$25,000.00) as a result of insurance policies carried by me of which she is the beneficiary, I direct that she shall receive from my estate the difference between the amount she shall receive from such insurance and Twenty-five Thousand Dollars (\$25,000.00). I give and bequeath to my wife a sum equal to the difference between Twenty-five Thousand Dollars (\$25,000.00)

and such sum under Twenty-five Thousand Dollars (\$25,000.00) that she may receive from such insurance, this provision to [2] take effect only if she elects to take under the terms of this Will.

Article V.

I give, devise and bequeath all the rest, residue and remainder of my estate, real, personal and mixed, of every kind and nature and wherever situated, which I may own at the time of my death, and all other property over which I may have any power of disposition (all of said property being hereinafter referred to as the "Trusted Property"), to the Trustees hereinafter named, to have and to hold upon the following trusts and conditions:

A. Wherever the "net value" of my estate is hereinafter mentioned, it shall mean the net value of my estate as so fixed by the California Inheritance Tax Appraiser, or appraisers, and distributed to the Trustees, after deducting all claims, liabilities, taxes chargeable against the estate and those payable therefrom under the terms of this Will, administration expenses, executors' and attorneys' fees and other obligations from the gross value of my estate.

In the event my wife shall elect to take under this Will, then all property subject to administration hereunder, whether community property, or my separate property, shall be considered in determining the net value of my estate; but in the event my wife shall elect to take her community rights

and not to take under this Will, then one-half the community property, together with my separate property, if any, and all other property that is subject to distribution to the Trustees under the terms of this Will shall be considered in determining the net value of my estate. [3]

B. If my wife, Nurma W. Huesman, shall predecease me, or we shall die in a common accident, or in the event she survives me, and shall die prior to making her election as to whether or not she shall take under the terms of this Will, then in any such event and providing the net value of said estate is less than Two Hundred and Fifty Thousand Dollars (\$250,000.00) then the provisions with reference to the Trusteed Property shall be as follows:

1. The Trustees shall set aside forty per cent (40%) of the Trusteed Property as a separate trust for my daughter, Carol Anne Huesman Marcato. The Trustees shall pay to my said daughter, the entire net income from her trust as long as she shall live. I desire that my said daughter shall receive at least Six Thousand Dollars (\$6,000.00) a year as income from this trust so long as my wife Nurma W. Huesman shall live, and thereafter that she shall receive at least Twelve Thousand Dollars (\$12,000.00) a year as income from this trust, and if the net income from such trust shall be less than said amount, such deficiency shall be made up out of the principal of such trust. The said minimum provisions hereinabove contained shall be net to my said daughter after the payment of taxes and

all charges. The Trustees shall set aside one-third ($\frac{1}{3}$) of said 40% of the Trusteed Property to be distributed to my said daughter as follows: when my said daughter shall attain the age of thirty (30) years, the Trustees shall pay to her one-fourth ($\frac{1}{4}$) of said one-third of said 40% of the Trusteed Property; when my said daughter shall attain the age of thirty-five (35) years, the Trustees shall pay to her one-third ($\frac{1}{3}$) of the remainder of said one-third of said 40% of the Trusteed Property; when my said daughter shall attain the age of forty (40) years, the Trustees shall pay to her one-half ($\frac{1}{2}$) of the remainder of said one-third of said (40%) of the [4] Trusteed Property; and when my said daughter shall attain the age of fifty (50) years, the Trustees shall pay to her the entire balance of said one-third of said 40% of the Trusteed Property. The remaining two-thirds ($\frac{2}{3}$) of said Trusteed Property shall be held in trust and the income therefrom shall be distributed as hereinabove provided, to my said daughter so long as she shall live. If my said daughter shall not survive me, or upon the death of my said daughter, in either such event, the provisions herein for her benefit shall terminate and the Trustees shall distribute the remainder of said 40% of the Trusteed Property, together with accumulations, if any, to her lawful issue, and if she be not survived by lawful issue, to my brother Fred H. Huesman, and my sister Mathilda Josephine Huesman Doll, share and share alike, and in the event my said brother shall die before distribution to him of the entire share

to which he is entitled, such share or undistributed remainder shall go and be distributed to his children as follows: three-fourths ($\frac{3}{4}$) thereof to Fred B. Huesman and one-fourth ($\frac{1}{4}$) thereof to Mary Gerard Huesman, except that if either of said children shall die before distribution, the share that would otherwise have gone to said child shall be distributed to the lawful descendants of said child, and in the event my said sister shall die before distribution to her of the entire share to which she is entitled, such share or undistributed remainder shall go and be distributed to her living and lawful descendants per stirpes, provided, however, that if there be no person qualified to take as herein provided, such share shall be distributed to my heirs at law in accordance with the laws of succession of the State of California.

2. The Trustees shall distribute forty per cent (40%) of the Trusteed Property to my brother Fred H. Huesman and [5] my sister Mathilda Josephine Huesman Doll, share and share alike, which said property shall be converted into money and then paid to my said brother and sister at any time within five (5) years after distribution of the Trusteed Property to the Trustees, provided, however, that not less than one-fifth (1/5) of said Trusteed Property shall be converted into money and distributed by said Trustees each year until fully distributed. In the event my said brother shall die before distribution to him of the entire share to which he is entitled, such share or undis-

tributed remainder shall go and be distributed to his children as follows: three-fourths ($\frac{3}{4}$) thereof to Fred B. Huesman and one-fourth ($\frac{1}{4}$) thereof to Mary Gerard Huesman, except that if either of said children shall die before distribution, the share that would otherwise have gone to said child shall be distributed to the lawful descendants of said child, and in the event my said sister shall die before distribution to her of the entire share to which she is entitled, such share or undistributed remainder shall go and be distributed to her living and lawful descendants per stirpes, provided, however, that if there be no person qualified to take as herein provided, such share shall be distributed to my heirs at law in accordance with the laws of succession of the State of California.

3. The Trustees shall convert twenty per cent (20%) of the Trusteed Property into money and distribute the same to the following named organizations in the proportions that follow: To Loyola University of Los Angeles, Regents' Fund, five-tenths ($\frac{5}{10}$) ; to Catholic Foreign Missions Society of America, Inc., one-tenth ($\frac{1}{10}$) ; to Little Sisters of the Poor, at present located at 2700 East First Street, Los [6] Angeles, California, one-tenth ($\frac{1}{10}$) ; and three-tenths ($\frac{3}{10}$) to the Employees' Retirement Plan of Desmond's, a California corporation, with its principal place of business at 616 South Broadway, Los Angeles, California, for the benefit of its employees, provided, however, that at the time of my death I am the owner of a majority of the

capital stock of Desmond's, and provided further, that such Employees' Retirement Plan of Desmond's at such time is in existence, and said three-tenths shall be added to the share in said Employees' Retirement Plan of Desmond's for the benefit of those persons in the employ of Desmond's prior to the effective date of said Employees' Retirement Plan of Desmond's and entitled to share thereunder. Such conversion of Trusteed Property into money and payments and distributions made to said organizations shall be made by the Trustees within five (5) years after the death of my said wife, and shall be made at such times and in such amounts as may be convenient for the Trustees in consideration of the condition of the Trusteed estate and market conditions, and the Trustees may exercise their sole discretion as to when and in what amounts such conversions and payments and distribution shall be made within said period of five (5) years. In the event that any of the organizations hereinabove named are not in existence or are not entitled to take by reason of any conditions or exceptions hereinabove stated, then such share shall be distributed to my heirs at law in accordance with the laws of succession of the State of California.

C. If my wife, Nuima W. Huesman, shall predecease me, or we shall die in a common accident, or in the event she survives me, and shall die prior to making her election as to whether or not she shall take under the terms of this Will, [7] then in such event and providing the net value of said estate

is Two Hundred and Fifty Thousand Dollars (\$250,000.00), or more, then the provisions with reference to the Trusteed Property shall be as follows:

1. The Trustees shall pay to my brother, Frank F. Huesman, a sum of money equal to two per cent (2%) of the Trusteed Property, which said money shall be paid to my said brother in five (5) equal installments. Should my said brother die before receiving distribution of the entire share herein provided to be paid to him, then the undistributed remainder thereof shall be distributed to my nephew, Fred B. Huesman, and in the event my said nephew shall die before distribution, then the undistributed remainder thereof shall be distributed to my heirs at law in accordance with the laws of succession of the State of California.

2. The Trustees shall set aside forty per cent (40%) of the Trusteed Property as a separate trust for my daughter Carol Anne Huesman Marcato. The Trustees shall pay to my said daughter, the entire net income from her trust as long as she shall live. I desire that my said daughter shall receive at least Six Thousand Dollars (\$6,000.00) a year as income from this trust so long as my wife Nurma W. Huesman shall live, and thereafter that she shall receive at least Twelve Thousand Dollars (\$12,000.00) a year as income from this trust, and if the net income from such trust shall be less than said amount, such deficiency shall be made up out of the principal of such trust. The said minimum

provisions hereinabove contained shall be net to my said daughter after the payment of taxes and all charges. The Trustees shall set aside one-third ($\frac{1}{3}$) of said 40% of the Trusteed Property to be distributed to my said daughter as follows: when my said daughter shall [8] attain the age of thirty (30) years, the Trustees shall pay to her one-fourth ($\frac{1}{4}$) of said one-third of said 40% of the Trusteed Property; when my said daughter shall attain the age of thirty-five (35) years, the Trustees shall pay to her one-third ($\frac{1}{3}$) of the remainder of said one-third of said 40% of the Trusteed Property; when my said daughter shall attain the age of forty (40) years, the Trustees shall pay to her one-half ($\frac{1}{2}$) of the remainder of said one-third of said 40% of the Trusteed Property; and when my said daughter shall attain the age of fifty (50) years, the Trustees shall pay to her the entire balance of said one-third of said 40% of the Trusteed Property. The remaining two-thirds ($\frac{2}{3}$) of said Trusteed Property shall be held in trust and the income therefrom shall be distributed as hereinabove provided, to my said daughter so long as she shall live. If my said daughter shall not survive me, or upon the death of my said daughter, in either such event, the provisions herein for her benefit shall terminate and the Trustees shall distribute the remainder of said 40% of the Trusteed Property, together with accumulations, if any, to her lawful issue, and if she be not survived by lawful issue, to my brother Fred H. Huesman, and my sister Mathilda Josephine Huesman Doll, share and share alike, and in the event my said

brother shall die before distribution to him of the entire share to which he is entitled, such share or undistributed remainder shall go and be distributed to his children as follows: three-fourths ($\frac{3}{4}$) thereof to Fred B. Huesman and one-fourth ($\frac{1}{4}$) thereof to Mary Gerard Huesman, except that if either of said children shall die before distribution, the share that would otherwise have gone to said child, shall be distributed to the lawful descendants of said child, and in the event my said sister shall die before [9] distribution to her of the entire share to which she is entitled, such share or undistributed remainder shall go and be distributed to her living and lawful descendants per stirpes, provided, however, that if there be no person qualified to take as herein provided, such share shall be distributed to my heirs at law in accordance with the laws of succession of the State of California.

3. The Trustees shall pay to my brother, Fred H. Huesman, a sum of money equal to twenty-four per cent (24%) of the Trusteed Property, which said money shall be paid to my said brother any time within five (5) years after distribution to the Trustees, provided, however, that not less than one-fifth ($\frac{1}{5}$) of said sum shall be distributed by the Trustees during each calendar year until the full sum is distributed. In the event my said brother shall die before distribution to him of the said entire sum, such share or its undistributed remainder shall go and be distributed to his children as follows: three-fourths ($\frac{3}{4}$) thereof to Fred B. Huesman and one-fourth ($\frac{1}{4}$) thereof to Mary Gerard Huesman, ex-

cept that if either of said children shall die before distribution, the share that would otherwise have gone to said child shall be distributed to the lawful descendants of said child, and if there be no person qualified to take as herein provided, such share shall be distributed to my heirs at law in accordance with the laws of succession of the State of California.

4. The Trustees shall pay to my sister Mathilda Josephine Huesman Doll, a sum of money equal to twenty-four per cent (24%) of the Trusteed Property, which said money shall be paid to my said sister any time within five (5) years after distribution to the Trustees, provided, however, that not less than one-fifth (1/5) of said sum shall be distributed by [10] the Trustees during each calendar year until the full sum is distributed. In the event my said sister shall die before distribution to her of the said entire sum, such share, or its undistributed remainder, shall go and be distributed to her living, lawful descendants per stirpes, and if she be not survived by any such descendants, then such share, or its undistributed remainder shall be distributed to my heirs at law in accordance with the laws of succession of the State of California.

5. The Trustees shall pay and distribute a sum of money equal to ten per cent (10%) of the Trusteed Property as follows: To my friend Dr. Henry M. Rooney, and if he be deceased to his wife, Mrs. May Rooney, the sum of Two Thousand Dollars (\$2,000.00); to my loyal secretary and employee Leonora Zinner, the sum of Two Thousand Dollars

(\$2,000.00); and to Mrs. Gregory Haran, my former secretary who rendered very loyal service to me, the sum of Two Thousand Dollars (\$2,000.00); which said respective sums shall be distributed as soon as reasonably possible, and the balance of said sum of money shall be paid and distributed by the Trustees to the following named organizations and in the proportions as follows: To Loyola University of Los Angeles, Regents' Fund, four-tenths (4/10); to Catholic Foreign Missions Society of America, Inc., one-tenth (1/10); to Little Sisters of the Poor, at present located at 2700 East First Street, Los Angeles, California, one-tenth (1/10); to St. Vincent's Hospital, at present located at Third and Alvarado Streets, Los Angeles, California, one-twentieth (1/20); to the Children's Hospital of Los Angeles, one-twentieth (1/20); and three-tenths (3/10) to the Employees' Retirement Plan of Desmond's, a California corporation with its principal place of business at 616 South Broadway, Los Angeles, California, for the benefit of its employees, provided, however, that at the [11] time of my death I am the owner of a majority of the capital stock of Desmond's, and provided further, that such Employees' Retirement plan of Desmond's at such time is in existence, and said three-tenths shall be added to the share in said Employees' Retirement Plan of Desmond's for the benefit of those persons in the employ of Desmond's prior to the effective date of said Employees' Retirement Plan of Desmond's and entitled to share thereunder. Such conversion of Trusteed Property into money and

payments and distributions made to said organizations shall be made by the Trustees within five (5) years after the death of my said wife, and shall be made at such times and in such amounts as may be convenient for the Trustees in consideration of the condition of the Trusteed estate and market conditions, and the Trustees may exercise their sole discretion as to when and in what amounts such conversions and payments and distribution shall be made within said period of five (5) years. In the event that any of the organizations hereinabove named are not in existence or are not entitled to take by reason of any conditions or exceptions hereinabove stated, then such share shall be distributed to my heirs at law in accordance with the laws of succession of the State of California.

D. If my wife shall elect to take under the terms of this Will, and in the event that the net value of said estate is less than Two Hundred and Fifty Thousand Dollars (\$250,000.00), then the provisions with reference to the Trusteed Property shall be as follows:

1. The Trustees shall forthwith set aside all the Trusteed Property as a trust for the benefit of my wife Nurma W. Huesman, and shall pay to her the entire net income therefrom as long as she shall live. I desire that my wife shall [12] receive at least Eighteen Thousand Dollars (\$18,000.00) a year as income from this trust and if the net income from this trust shall be less than said amount, such deficiency shall be made up out of the principal

of such trust. The said minimum provision hereinabove contained shall be net to my said wife after the payment of taxes and all charges. Upon the death of my wife, the income from this trust shall be paid to my said daughter Carol Anne Huesman Marcato as long as she shall live. I desire that my said daughter shall receive at least Twelve Thousand Dollars (\$12,000.00) a year as income from this trust, and if the net income from such trust shall be less than said amount, such deficiency shall be made up out of the principal of such trust. The said minimum provision hereinabove contained shall be net to my said daughter after the payment of taxes and all charges. Upon the death of my wife, the Trustees shall set aside one-third of this trust to be distributed to my said daughter as follows: when my said daughter shall attain the age of thirty (30) years, the Trustees shall pay to her one-fourth ($\frac{1}{4}$) of said one-third; when my said daughter shall attain the age of thirty-five (35) years, the Trustees shall pay to her one-third ($\frac{1}{3}$) of the remainder of said one-third; when my said daughter shall attain the age of forty (40) years, the Trustees shall pay to her one-half ($\frac{1}{2}$) of the remainder of said one-third; and when my said daughter shall attain the age of fifty (50) years, the Trustees shall pay to her the entire balance of said one-third of this trust. The remaining two-thirds ($\frac{2}{3}$) of said trust shall be held in trust and the income therefrom shall be distributed as hereinabove provided, to my said daughter, so long as she shall live. In the event my said daughter shall not sur-

vive my wife, or upon the death [13] of my said daughter, in either such event, the provisions herein for her benefit shall terminate and the Trustees shall distribute the remainder of this said trust to the lawful issue of her body.

E. If my wife shall elect to take under the terms of this Will, and in the event that the net value of my estate if Two Hundred and Fifty Thousand Dollars (\$250,000.00) or more, then the provisions with reference to the Trusteed Property shall be as follows:

1. The Trustees shall pay to my brother Frank F. Huesman, a sum of money equal to two per cent (2%) of the Trusteed Property, which said money shall be paid to my said brother in five (5) equal yearly installments. Should my said brother die before receiving distribution of the entire share therein provided to be paid to him, then such share or its undistributed remainder shall be distributed to my nephew Fred B. Huesman, and in the event my said nephew shall die before distribution, then the undistributed remainder thereof shall be distributed to my heirs at law in accordance with the laws of succession of the State of California.

2. The Trustees shall forthwith set aside as a separate trust for the benefit of my wife Nurma W. Huesman, sixty per cent (60%) of the principal of the Trusteed Property and shall pay to her the entire net income therefrom as long as she shall live. I desire that my wife shall receive at least Eighteen Thousand Dollars (\$18,000.00) a year as income

from this trust and if the net income from this trust shall be less than said amount, such deficiency shall be made up out of the principal of such trust. The said minimum provision hereinabove contained shall be net to my said wife after the payment of taxes and all charges. Upon the death of my wife, the income from this trust shall be paid to my said daughter Carol Anne Huesman [14] Marcato as long as she shall live. I desire that my said daughter shall receive at least Twelve Thousand Dollars (\$12,000.00) a year as income from this trust, and if the net income from such trust shall be less than said amount, such deficiency shall be made up out of the principal of such trust. The said minimum provision hereinabove contained shall be net to my said daughter after the payment of taxes and all charges. Upon the death of my wife, the Trustees shall set aside one-third of this trust to be distributed to my said daughter as follows: when my said daughter shall attain the age of thirty (30) years, the Trustees shall pay to her one-fourth ($\frac{1}{4}$) of said one-third; when my said daughter shall attain the age of thirty-five (35) years, the Trustees shall pay to her one-third ($\frac{1}{3}$) of the remainder of said one-third; when my said daughter shall attain the age of forty (40) years, the Trustees shall pay to her one-half ($\frac{1}{2}$) of the remainder of said one-third; and when my said daughter shall attain the age of fifty (50) years, the Trustees shall pay to her the entire balance of said one-third of this trust. The remaining two-thirds ($\frac{2}{3}$) of said trust shall be held in trust and the income

therefrom shall be distributed as hereinabove provided, to my said daughter, so long as she shall live. In the event my said daughter shall not survive my wife, or upon the death of my said daughter, in either such event, the provisions herein for her benefit shall terminate and the Trustees shall distribute the remainder of this said trust to the lawful issue of her body.

3. The Trustees shall pay to my brother Fred H. Huesman, a sum of money equal to fourteen per cent (14%) of the Trusteed Property, which said money shall be paid to my said brother any time within five (5) years after distribution to the Trustees, provided, however, that not less than one-fifth [15] (1/5) of said sum shall be distributed by the Trustees during each calendar year until the full sum is distributed. In the event my said brother shall die before distribution to him of the said entire sum, such share, or its undistributed remainder, shall go and be distributed to his children as follows: three-fourths (3/4) thereof to Fred B. Huesman and one-fourth (1/4) thereof to Mary Gerard Huesman, except that if either of said children shall die before distribution, the share that would otherwise have gone to said child shall be distributed to the lawful descendants of said child, and if there be no person qualified to take as herein provided, such share shall be distributed to my heirs at law in accordance with the laws of succession of the State of California.

4. The Trustees shall pay to my sister Mathilda

Josephine Huesman Doll, a sum of money equal to fourteen per cent (14%) of the Trusteed Property, which said money shall be paid to my said sister any time within five (5) years after distribution to the Trustees, provided, however, that not less than one-fifth (1/5) of said sum shall be distributed by the Trustees during each calendar year until the full sum is distributed. In the event my said sister shall die before distribution to her of the said entire sum, such share, or its undistributed remainder, shall go and be distributed to her living, lawful descendants per stirpes, and if she be not survived by any such descendants, then such share, or its undistributed remainder shall be added by the Trustees to the principal of the trust herein provided for my wife, Nurma W. Huesman, subject to all the terms of said trust.

5. The Trustees shall pay and distribute a sum of money equal to ten per cent (10%) of the Trusteed Property as follows: To my friend Dr. Henry M. Rooney, and if he be [16] deceased to his wife, Mrs. May Rooney, the sum of Two Thousand Dollars (\$2,000.00); to my loyal secretary and employee Leonora Zinner, the sum of Two Thousand Dollars (\$2,000.00); and to Mrs. Gregory Haran, my former secretary who rendered very loyal service to me, the sum of Two Thousand Dollars (\$2,000.00); which said respective sums shall be distributed as soon as reasonably possible, and the balance of said sum of money shall be paid and distributed by the Trustees to the following named organizations and

in the proportions as follows: To Loyola University of Los Angeles, Regents' Fund, five-tenths (5/10); to Catholic Foreign Missions Society of America, Inc., one-tenth (1/10); to Little Sisters of the Poor, at present located at 2700 East First Street, Los Angeles, California, one-tenth (1/10); and three-tenths (3/10) to the Employees' Retirement Plan of Desmond's, a California Corporation with its principal place of business at 616 South Broadway, Los Angeles, California, for the benefit of its employees, provided, however, that at the time of my death I am the owner of a majority of the capital stock of Desmond's, and provided further, that such Employees' Retirement Plan of Desmond's at such time is in existence, and said three-tenths shall be added to the share in said Employees' Retirement Plan of Desmond's for the benefit of those persons in the employ of Desmond's prior to the effective date of said Employees' Retirement Plan of Desmond's and entitled to share thereunder. Such conversion of Trusteed Property into money and payments and distributions made to said organizations shall be made by the Trustees within five (5) years after distribution to the Trustees and shall be made at such times and in such amounts as may be convenient for the Trustees in consideration of the condition of the Trust Estate, and the Trustees may exercise in their sole discretion as to when and in [17] what amounts such payments and distributions shall be made within said period of five (5) years. In the event that for any reason any of the provisions in this paragraph shall be-

come inoperative, then the portion and the percentage of such sum as to which it shall be inoperative shall be added by the Trustees to the principal of the Trust herein provided for my wife Nurma W. Huesman, or if she nor my daughter Carol Anne Huesman Marcato be then living, such portion shall go and be distributed equally to my brother Fred H. Huesman and my sister Mathilda Josephine Huesman Doll, and in the event my said brother shall die before distribution to him of any such portion to which he is entitled, such portion shall go and be distributed to his children as follows: three-fourths ($\frac{3}{4}$) to Fred B. Huesman and one-fourth ($\frac{1}{4}$) to Mary Gerard Huesman, except that if either of said children shall die before distribution, the share that would otherwise have gone to said child shall be distributed to the lawful descendants of said child; and in the event my said sister shall die before distribution to her of any such portion to which she is entitled, such portion shall go and be distributed to her living and lawful descendants per stirpes, provided, however, that if there be no person qualified to take as herein provided, such share shall be distributed to my heirs at law in accordance with the laws of succession of the State of California.

F. If my wife shall elect not to take under the terms of this Will, and in the event that the net value of my estate distributed by the Trustees is less than One Hundred and Twenty-five Thousand Dollars (\$125,000.00), then the provisions with

reference to the Trusteed Property shall be as follows:

1. The Trustees shall forthwith set aside as a separate trust for the benefit of my daughter Carol Anne Huesman [18] Marcato, forty per cent (40%) of the principal of the Trusteed Property and shall pay to her the entire net income therefrom as long as she shall live. I desire that my said daughter shall receive at least Six Thousand Dollars (\$6,000.00) a year as income from this trust so long as my wife Nurma W. Huesman shall live, and thereafter that she shall receive at least Twelve Thousand Dollars (\$12,000.00) a year as income from this trust, and if the net income from this trust shall be less than said amount, such deficiency shall be made up out of the principal of such trust. The said minimum provisions hereinabove contained shall be net to my said daughter after the payment of taxes and all charges. The Trustees shall set aside one-third ($\frac{1}{3}$) of said trust to be distributed to my said daughter as follows: when my said daughter shall attain the age of thirty (30) years, the Trustees shall pay to her one-fourth ($\frac{1}{4}$) of said one-third of said trust; when my said daughter shall attain the age of thirty-five (35) years, the Trustees shall pay to her one-third of the remainder of said one-third of said trust; when my said daughter shall attain the age of forty (40) years, the Trustees shall pay to her one-half ($\frac{1}{2}$) of the remainder of said one-third of said trust; and when my said daughter shall attain the age

of fifty (50) years; the Trustees shall pay to her the entire balance of said one-third of said trust. The remaining two-thirds ($\frac{2}{3}$) of said trust shall be held in trust and the income therefrom shall be distributed as hereinabove provided, to my said daughter, so long as she shall live. Upon the death of my said daughter, the provisions herein for her benefit shall terminate and the Trustees shall distribute the remainder of this said trust to the lawful issue of her body. [19]

2. The Trustees shall pay to my brother Fred H. Huesman, a sum of money equal to twenty per cent (20%) of the Trusteed Property, which said money shall be paid to my said brother at any time within five (5) years after distribution to the Trustees, provided, however, that no less than one-fifth ($\frac{1}{5}$) of said sum shall be distributed by the Trustees during each calendar year until the full sum is distributed. In the event my said brother shall not survive me or shall die before distribution to him of said entire sum, such share or undistributed remainder shall go and be distributed to his children as follows: three-fourths ($\frac{3}{4}$) to Fred B. Huesman and one-fourth ($\frac{1}{4}$) to Mary Gerard Huesman, except that if either of said children shall die before distribution, the share that would otherwise have gone to said child shall be distributed to the lawful descendants of said child, and if he be not survived by any such descendants, then such share or its undistributed remainder shall be distributed to my heirs at law in accordance with the laws of succession of the State of California.

3. The Trustees shall pay to my sister Mathilda Josephine Huesman Doll, a sum of money equal to twenty per cent of the Trusteed Property, which said money shall be paid to my said sister at any time within five (5) years after distribution to the Trustees, provided, however, that no less than one-fifth (1/5) of said sum shall be distributed by the Trustees during each calendar year until the full sum is distributed. In the event my said sister shall not survive me or shall die before distribution to her of said entire sum, such share or its undistributed remainder shall go and be distributed to her living, lawful descendants, per stirpes, and if she be not survived by any such descendants, then such share or its undistributed remainder shall be distributed to my heirs at law in [20] accordance with the laws of succession of the State of California.

4. The Trustees shall convert twenty per cent (20%) of the Trusteed Property into money and distribute the same to the following named organizations in the proportions as follows: To Loyola University of Los Angeles, Regents' Fund, five-tenths (5/10ths); to Catholic Foreign Missions Society of America, Inc., one-tenth (1/10th); to Little Sisters of the Poor at present located at 2700 East First Street, Los Angeles, California, one-tenth (1/10th); and three-tenths (3/10ths) to the Employees' Retirement Plan of Desmond's, a California corporation with its principal place of business at 616 South Broadway, Los Angeles, California,

for the benefit of its employees, provided, however, that at the time of my death I am the owner of a majority of the capital stock of Desmond's, and provided further, that such Employees' Retirement Plan of Desmond's at such time is in existence, and said three-tenths shall be added to the share in said Employees' Retirement Plan of Desmond's for the benefit of those persons in the employ of Desmond's prior to the effective date of said Employees' Retirement Plan of Desmond's and entitled to share thereunder. Such conversion of Trusteed Property into money and payments and distributions made to said organizations shall be made by the Trustees within five (5) years after distribution to the Trustees and shall be made at such times and in such amounts as may be convenient for the Trustees in consideration of the condition of the Trust Estate, and the Trustees may exercise in their sole discretion as to when and in what amounts such conversions and payments and distribution shall be made within said period of five (5) years. If distribution cannot be made to any of the foregoing organizations by reason of any condition or proviso herein contained, [21] or by reason of the non-existence of an organization qualified to take distribution, then the share that would otherwise have been distributed to such organization shall be distributed to my heirs at law in accordance with the laws of succession of the State of California.

G. If my wife shall elect not to take under the terms of this Will, and in the event the net value of

my estate is One Hundred and Twenty-five Thousand Dollars (\$125,000.00), or more, then the provisions with reference to the Trusteed Property shall be as follows:

1. The Trustees shall forthwith set aside as a separate trust for the benefit of my daughter Carol Anne Huesman Marcato forty (40%) per cent of the principal of the Trusteed Property and shall pay to her the entire net income therefrom as long as she shall live. I desire that my said daughter shall receive at least Six Thousand Dollars (\$6,000.00) a year as income from this trust so long as my wife Nurma W. Huesman shall live, and thereafter that she shall receive at least Twelve Thousand Dollars (\$12,000.00) a year as income from this trust, and if the net income from this trust shall be less than said amount, such deficiency shall be made up out of the principal of such trust. The said minimum provisions hereinabove contained shall be net to my said daughter after the payment of taxes and all charges. The Trustees shall set aside one-third (1/3rd) of said trust to be distributed to my said daughter as follows: when my said daughter shall attain the age of thirty (30) years, the Trustees shall pay to her one-fourth (1/4) of said one-third of said trust; when my said daughter shall attain the age of thirty-five (35) years, the Trustees shall pay to her one-third of the remainder of said one-third of said trust; when my said daughter shall attain the age of forty (40) [22] years, the Trustees shall pay to her one-half (1/2) of the remainder of said one-third of

said trust; and when my said daughter shall attain the age of fifty (50) years, the Trustees shall pay to her the entire balance of said one-third of said trust. The remaining two-thirds ($\frac{2}{3}$) of said trust shall be held in trust and the income therefrom shall be distributed as hereinabove provided, to my said daughter, so long as she shall live. Upon the death of my said daughter, the provisions herein for her benefit shall terminate and the Trustees shall distribute the remainder of this said trust to the lawful issue of her body.

2. The Trustees shall pay to my brother Frank F. Huesman, a sum of money equal to four per cent (4%) of the Trusteed Property, which said money shall be paid to my said brother in five (5) equal yearly installments. Should my said brother die before receiving distribution of the entire share herein provided to be paid to him, then such share or its undistributed remainder shall be paid to my nephew Fred B. Huesman, and if he be not then living, to my heirs at law in accordance with the laws of succession of the State of California.

3. The Trustees shall set aside twenty per cent (20%) of all the property distributed to them under the decree of distribution as a trust for the benefit of my brother Fred H. Huesman, and shall pay to him the entire net income from his trust as long as he shall live and upon his death this trust shall terminate and the principal and accumulations, if any, shall go and be distributed to his children as follows: three-fourths ($\frac{3}{4}$) to Fred B. Huesman

and one-fourth ($\frac{1}{4}$) to Mary Gerard Huesman, except that if either of said children shall die before distribution, the share that would otherwise have gone to said child shall be distributed to the lawful descendants of said child, and in the event there be no lawful descendants [23] then to my heirs at law in accordance with the laws of succession of the State of California.

4. The Trustees shall set aside twenty per cent (20%) of all the property distributed to them under the decree of distribution as a trust for the benefit of my sister Mathilda Josephine Huesman Doll, and shall pay to her the entire net income from her trust as long as she shall live, and upon her death this trust shall terminate and the principal and accumulations, if any, shall be distributed to her living, lawful descendants, per stirpes, and if she be not survived by any living lawful descendants, to my heirs at law in accordance with the laws of succession of the State of California. If upon my death my said sister Mathilda Josephine Huesman Doll shall not survive me, but living, lawful descendants of my said sister shall survive me, then upon my death twenty per cent (20%) of the Trusteed Property shall be distributed to the living, lawful descendants of my said sister per stirpes, and if there be no living, lawful descendants of my said sister, then to my heirs at law in accordance with the laws of succession of the State of California.

5. The Trustees shall pay and distribute a sum of money equal to sixteen per cent (16%) of the

Trusted Property as follows: To my friend Dr. Henry M. Rooney, and if he be deceased to his wife, Mrs. May Rooney, the sum of Two Thousand Dollars (\$2,000.00); to my loyal secretary and employee Leonora Zinner, the sum of Two Thousand Dollars (\$2,000.00); and to Mrs. Gregory Haran, my former secretary who rendered very loyal service to me, the sum of Two Thousand Dollars (\$2,000.00); which said respective sums shall be distributed as soon as reasonably possible, and the balance of said sum of money shall be paid and distributed by [24] the Trustees to the following named organizations and in the proportions as follows: To Loyola University of Los Angeles, Regents' Fund, four-tenths (4/10ths); to Catholic Foreign Missions Society of America, Inc., one-tenth (1/10th); to Little Sisters of the Poor, at present located at 2700 East First Street, Los Angeles, California, one-tenth (1/10th); to St. Vincent's Hospital, at present located at Third and Alvarado Streets, Los Angeles, California, one-twentieth (1/20th); to the Children's Hospital of Los Angeles, one-twentieth (1/20th); and three-tenths (3/10ths) to the Employees' Retirement Plan of Desmond's, a California corporation with its principal place of business at 616 South Broadway, Los Angeles, California, for the benefit of its employees, provided, however, that at the time of my death I am the owner of a majority of the capital stock of Desmond's, and provided further, that such Employees' Retirement Plan of Desmond's at such time is in existence, and said three-tenths shall be added to the share in said Employees' Retirement

Plan of Desmond's for the benefit of those persons in the employ of Desmond's prior to the effective date of said Employees' Retirement Plan of Desmond's and entitled to share thereunder. Such conversion of Trusteed Property into money and payments and distributions made to said organizations shall be made by the Trustees within five (5) years after distribution to the Trustees and shall be made at such times and in such amounts as may be convenient for the Trustees in consideration of the condition of the Trust Estate, and the Trustees may exercise in their sole discretion as to when and in what amounts such conversions and payments and distribution shall be made within said period of five (5) years. If distribution cannot be made to any of the [25] organizations hereinabove named or for any reason any of the provisions in this paragraph shall become inoperative, then as to the portion and the percentage of such sum as to which it shall be inoperative, it shall be distributed by the Trustees to my nephew Fred B. Huesman, and if he be not then living but is survived by issue, to his issue, and if he be not survived by issue, then to my heirs at law in accordance with the laws of succession of the State of California. [26]

H. If at any time after my death there shall be no qualified recipients for any portion of the Trusteed Property to whom distribution can be made under the terms of this Will, then the portion of the Trusteed Property with respect to which there is such total failure of qualified recipients, shall be dis-

tributed to my heirs at law in accordance with the laws of succession of the State of California.

I. I have purposely neglected to make provision for the three sons of my brother Fred H. Huesman who have gone into the priesthood for the reason that in joining the priesthood they have taken vows of poverty.

J. It is not my intention necessarily to conserve the Trusteed Property for the use and benefit of the beneficiaries, or any of them, who ultimately may be entitled thereto by virtue of the foregoing provisions of this Will. On the contrary, my primary purpose is to provide for and protect my wife if she elects to take under the provisions of this Will, and my daughter in any event, and if my wife elects to take under this Will, and in any event with respect to my daughter, I direct that the Trustees in their uncontrolled discretion may at any time, and from time to time, pay to or expend and apply for the benefit of my wife for her support, care or comfort, and from time to time pay to or expend and apply for the benefit of my daughter for her support, care or comfort, such sums out of the principal of the Trusteed Property as the Trustees in their absolute discretion may deem advisable, and in the event of any such payment the amount thereof shall be charged against that part of the Trusteed Property from which such beneficiary is or may become entitled to receive the income, or against the trust of such beneficiary in the principal of the Trusteed [27] Property.

K. During the minority or other legal disability of any beneficiary to whom such payments of income, or payments of principal in the discretion of the Trustees, are herein directed to be made, the Trustees may make such payments in any one or more of the following ways: (1) directly to said beneficiary; or (2) to the legal guardian or conservator of said beneficiary. The Trustees shall not be required to see to the application of any such payment so made to any of said persons, but his or their receipts therefor shall be a full discharge for the Trustees.

L. Each beneficiary hereunder is hereby prohibited from anticipating, encumbering, assigning or in any other way alienating his or her interest in either principal or income, and is without power so to do, nor shall such interest be subject to his or her liabilities or obligations, nor to attachment, execution or other legal process, bankruptcy proceedings or claims of creditors or others. The Trustees may, however, deposit in any bank designated by a beneficiary, to his or her credit, income and/or principal payable to such beneficiary.

M. Upon the death of any beneficiary, any accrued and undistributed net income which would have been payable to such beneficiary had such beneficiary continued to live, shall be paid to the beneficiary who shall next be entitled upon the death of such deceased beneficiary to receive such income or the principal from which such income was derived.

N. The Trustees shall have full power and authority to hold, manage, insure, improve, repair and deal with all property, real or personal, at any time forming part of the Trusteed Property, to sell, contract to sell, convey, transfer, exchange, partition, lease for any term within or extending [28] beyond the duration of this trust, and to grant for like terms, the right to mine or drill for and remove therefrom gas, oil or other minerals; to create restrictions, easements or other servitudes thereon; to mortgage, pledge and otherwise dispose of the same or any interest therein, all in such manner, for such consideration and upon such terms and conditions as the Trustees in their discretion shall determine; to effect insurance, including public liability insurance, at the expense of the Trust Estate, of such nature and in such form and amount as the Trustees deem advisable; to employ such agents and counsel, including legal and investment counsel, as may be reasonably necessary or desirable in managing, protecting and investing the Trusteed Property, and to pay them reasonable compensation; to settle, compromise or abandon all claims and demands in favor of or against the Trusteed Property; to accept, add to, hold and retain as a part of the Trusteed Property, or any particular trust or portion thereof, any property of any kind or nature which may at any time be transferred, conveyed or delivered to the Trustees for such purposes by any persons; to borrow money, with or without security, for any purpose, either from any of the Trustees individually or from others; to assume the payments of and to

extend and renew any indebtedness incurred by me or by my Executors or Trustees, or secured by any property which may at any time form a part of the Trusteed Property; to invest and reinvest the Trusteed Property in any stocks, bonds, mortgages, notes or other securities or property of any kind or nature, real or personal, notwithstanding such investments may not be prescribed by law or rule of court for the investment of trust funds, and to change such investments; to buy, sell, hold and otherwise deal in any and all commodities of every kind and description whatsoever; to vote any corporate stock either in person or by proxy [29] for any purpose; to exercise any conversion privilege or subscription right given to the Trustees as the owners of any securities forming a part of the Trusteed Property; to consent to, take any action in connection with and receive and retain any securities resulting from any reorganization, consolidation, merger, liquidation, readjustment of the financial structure or sale of the assets of any corporation or other organization the securities of which may constitute a portion of the Trusteed Property, to cause any securities or other property which may at any time form a part of the Trusteed Property to be issued, held or registered in the individual names of any or all of the Trustees, or in the name of their nominee, or in such form that title will pass by delivery; provided that if at the time of my death I am the owner, either directly or indirectly or through other corporations or otherwise, of stock in the business now known as "Desmond's" I recommend that the Trustees sell and

dispose of the same and invest the proceeds of such sale or disposition in listed marketable securities; I recommend further that the Trustees first offer to sell such stock to the heads of the departments of the said business, or to such of them as are able to purchase the same, otherwise to dispose of it in such manner as the Trustees shall deem most advisable. The Trustees shall have full power and authority to determine what is principal of the Trusteed Property, gross income or net distributable income therefrom; except that all bonuses, royalties and recoveries from mines, gas or oil leases or wells, all stock dividends and proceeds of sale of stock rights, and all gain or loss which may result from payment, retirement of sale of stocks, notes, bonds or other securities or on foreclosure or other realization upon mortgages and trust deeds, shall inure to or fall upon principal, [30] and all cash dividends (other than liquidating dividends stated in writing to be such by the corporation paying the same or proved to the satisfaction of the Trustees to be such prior to their disbursement thereof) shall go to income of the Trusteed Property. The net income from real property acquired by the Trustees on, or by acceptance of conveyance in lieu of, foreclosure shall go to income of the Trusteed Property, brokers' or other commissions and expenses on purchase or sale of Trusteed Property shall be charged against principal. The Trustees may pay all premiums and assessments of any policy of insurance forming part of the Trusteed Property and exercise any option, privilege or benefit in connection with any such pol-

icy, including the right to surrender any such policy for a paid-up policy or for its cash surrender value, use any such policy as security for any purpose whatever, assign any such policy, change the manner in which and the persons to whom any such policy shall be payable at the maturity thereof, apply automatic loan provisions for the payment of premiums, and direct the payment of dividends thereon to be made in cash or to be applied toward the reduction of premiums.

O. All discretions in this Will conferred upon the Trustees shall, unless specifically limited, be absolute and their exercise conclusive on all beneficiaries hereunder. The enumeration of certain powers and discretions of the Trustees are not to be construed as limiting their general powers and discretions, the Trustees being hereby vested with and having as to the Trusteed Property all the powers and discretions that an absolute owner of property has or may have.

P. If my wife shall elect to take under the provisions of this Will, then and in that event only, I expressly direct [31] that prior to any investment the Trustees must first consult my wife, Nurma W. Huesman, so long as she shall live, and in the event she objects to any certain investments the Trustees must seek a new and different investment until they shall find an investment that is approved by my said wife; in all other matters relating to the Trusteed Property, if at any time the Trustees shall disagree in any matter relating to the Trusteed Property, the

decision of the corporate trustee and one individual trustee shall be required in any matter or transaction, and shall be valid and binding as if all the Trustees had joined therein.

Q. No person dealing with the Trustees in any manner shall be under any obligation to see to the application of any money paid to the Trustees, or to inquire into the validity, expediency or propriety of any act of the Trustee, or into any of the provisions of this Will.

R. The Trustees shall be reimbursed out of said Trusteed Property for all reasonable expenses incurred in the management and protection thereof and the Trustees shall be paid a fair and just compensation out of the Trusteed Property for their services hereunder.

Article VI.

In making division of the Trusteed Property into separate trusts pursuant to the provisions of paragraphs B, C, D, E, F and G of Article V of this Will, as the case may be, the Trustees may assign to the several trusts any property of the Trusteed Property in kind or any undivided interest therein. A separate account shall be kept by the Trustees of each of said trusts and the investments in each of said separate trusts shall at all times be kept the same as near as may be, and to [32] that end joint investments may be made by the Trustees on behalf of said separate trusts. In making any distribution pursuant to this Will, the Trustees may distribute in kind any property of the Trusteed Property or

any undivided interest therein. The judgment of the Trustees respecting the value of any property assigned to the several trusts or distributed in kind shall be binding and conclusive on all beneficiaries hereunder.

Article VII.

(a) I nominate and appoint my nephew Fred B. Huesman and Marcellus Doll, and the Farmers & Merchants National Bank of Los Angeles, California, as Trustees under this Will, except that if my wife, Nurma W. Huesman, shall elect to take under the provisions of this Will, then the Trustees shall be my said wife, my nephew Fred B. Huesman and Farmers & Merchants National Bank of Los Angeles, California. In the event of the death, resignation, refusal or incapacity to act of both of said individual Trustees and all successor individual Trustees appointed under the provisions of this Will, before the termination of all the trusts hereby created, then the corporate Trustee shall thereafter be the sole Trustee hereunder with all the powers, authorities and discretions herein given to the original Trustees jointly, until such time as one or more successor individual Trustees are appointed.

(b) In the event that the corporate Trustee at any time acting hereunder shall be merged with or consolidated with or shall sell or transfer substantially all of its assets and business to another corporation, state or federal, or shall be in any manner reorganized, or reincorporated, then the corporation resulting from such merger, consolidation, reorgan-

ization [33] or reincorporation, or the corporation to which such sale or transfer shall be made, shall thereupon become and be a Trustee hereunder without the execution of any instrument and without any further action on the part of any of the Trustees or beneficiaries hereunder.

(c) The corporate Trustee at any time acting hereunder may resign at any time by giving at least two months prior written notice of such resignation to all the individual Trustees then acting hereunder; but any such resignation may take effect before the expiration of such two months period by agreement of all the Trustees then acting hereunder. The individual Trustees or one individual Trustee if there be only one, at any time acting hereunder shall have the power at any time and from time to time, by a written instrument signed by such Trustees or Trustee, to remove the corporate Trustee then acting hereunder. In the event of the resignation, removal, refusal or inability to act of the corporate Trustee at any time, the individual Trustees or Trustee then acting hereunder must, by a written instrument signed by them, appoint as successor corporate Trustee hereunder a bank or trust company. Upon such appointment of such successor corporate Trustee, the retiring corporate Trustee shall convey, assign and deliver to such successor corporate Trustee, all property then held in trust hereunder, and the receipt of such successor corporate Trustee shall be a full and complete acquittance and discharge to such retiring Trustee.

(d) Any individual Trustee hereunder shall have

the power at any time, by a written instrument signed by him or her, to resign as a Trustee hereunder and to appoint as successor individual Trustee any person whom he or she may select. In [34] the event that any individual Trustee hereunder shall at any time die, resign or become incapable of acting hereunder, without having appointed a successor Trustee, then the other individual Trustee then acting hereunder may, by an instrument in writing signed by him or her, appoint a successor individual Trustee to fill such vacancy.

(e) It is my intention that as far as practicable there shall at all times be two individual Trustees and one corporate Trustee acting hereunder, but during the vacancy in the office of any Trustee hereunder, irrespective of how long such vacancy shall continue, the remaining Trustees or Trustee hereunder shall have and exercise all the powers, authorities and discretions given herein to all the Trustees.

(f) The corporate trustee shall at all times be entitled to and have custody and possession of all the property and assets of the trusts created herein and shall keep records and books of account wherein all the assets of the trust and all transactions with respect thereto shall be reflected. Such records and books of account shall be delivered to each succeeding corporate trustee. The individual trustee shall at all reasonable times have access to such records and books of account and may make copies of the whole or such portions thereof as they may from time to time require. The legal title to all property held in trust hereunder shall be and remain vested in the

Trustees and successor Trustees, individual and corporate, from time to time acting hereunder, without any act of conveyance or transfer to, by or from any succeeding or retiring Trustee, and the Trustees or Trustee, and successor Trustees or Trustee from time to time acting hereunder, shall have all the rights, powers and authorities, discretionary or otherwise, [35] herein granted to the original Trustees jointly. No successor Trustee shall be obliged to inquire into or be in any way accountable for the previous administration of the Trustee Property.

(g) I expressly direct that no Trustee hereunder shall be required to give any bond or security for the proper discharge of his, her or its duties hereunder, nor shall any Trustee hereunder ever be liable for any act or default of any co-trustee or predecessor Trustee, nor for any loss sustained by any trust created hereunder or by any beneficiaries or beneficiary thereof through any error of judgment, but only for his, her or its own willful default.

Article VIII.

In the event that any provision or provisions of this Will are, or are adjudged to be, for any reason, unenforceable, I direct that, disregarding such, the remaining provisions hereof shall subsist and be carried into effect.

Article IX.

(a) I nominate and appoint as Executors of this Will my nephew Fred B. Huesman, my nephew

Marcellus Doll and the Farmers & Merchants National Bank of Los Angeles, California, or such of them as shall qualify, and in the event of the death, resignation, refusal or inability to act of any of them, the others or other of them shall act alone, except that if my wife shall elect to take under this Will then I nominate her as an executrix in the place of my said nephew Marcellus Doll. My Executors are authorized to lease, encumber and sell property from my estate subject to such confirmation as may be required by law and the Executors may continue to hold, manage and operate any property and subject to court approval any business [36] belonging to my estate. The bank shall have physical possession and custody of the property of my estate, subject to the right of the co-Executors to have access to it at all reasonable times, and may make all disbursements.

(b) I expressly direct that no Executor hereunder shall be required to give any bond or security for the proper discharge of his, her or its duties hereunder.

In Witness Whereof, I have hereunto set my hand and seal to this my Last Will and Testament, consisting of thirty-seven (37) typewritten pages, including the page signed by the witnesses, on the left hand margin of each of which I have placed my signature for greater security and better identification this 4th day of April, A.D. 1944.

[Seal]

RALPH R. HUESMAN,
(Christened as Raphael R.
Huesman.)

The foregoing instrument, consisting of thirty-seven (37) typewritten pages, this included, each page thereof bearing on its left hand margin the signature of the Testator, was on this 4th day of April, 1944, signed, sealed, published and declared by the said Testator as and for his Last Will and Testament, in the presence of us, who, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses thereto, we and each of us believing that the Testator was at the time of the execution of this, his Last Will and Testament, of sound and disposing mind and memory and was not influenced by any person whomsoever and was at the time hereof, cognizant of any and all persons who had any right or claim upon him.

/s/ LEONORE M. ZINNER,

Residing at: 1604 Fremont So. Pasadena Calif.

/s/ ARTHUR ROOT,

Residing at: 6143 Santa Fe Ave Huntington Park Calif.

/s/ JOHN R. SCANILIN,

Residing at: 122 N Anita Ave. L. A. Calif. [37]

EXHIBIT B

No. 233,009

ESTATE OF RALPH R. HUESMAN,
Deceased.

In the Matter of
The Estate of RALPH R. HUESMAN,
Deceased.

**PETITION FOR INSTRUCTIONS TO
TESTAMENTARY TRUSTEES**

To the Above-Entitled Superior Court:

The petition of Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, respectfully shows that:

I.

Petitioners are the duly appointed, qualified and acting Executors under the Will of Ralph R. Huesman, deceased.

Petitioners are the Trustees named in said Will of Ralph R. Huesman, deceased; and petitioners have accepted, and hereby do accept the Trust created and declared therein.

II.

The estate has been appraised by an Inheritance Tax Appraiser in the sum of \$3,749,196.98, as shown by the inventory and appraisement on file herein.

III.

The first Notice to Creditors was published on

June 21, 1944, and the time for filing claims has expired. Claims and indebtedness against the estate for ordinary executors and attorneys fees and commissions will amount to approximately \$150,000.00.

IV.

The net value of the estate available for the payment of taxes and legacies and other charges is approximately \$3,599,000.00.

V.

Among the assets of the Estate of Ralph R. Huesman, deceased, and constituting a part of the corpus thereof, is an item of compensation due the decedent in the form of a bonus from Desmond's, a corporation, in the sum of \$80,517.00.

VI.

Among the claims filed and allowed is that of Desmond's, a corporation, which has been allowed in the sum of \$30,562.06, representing the balance of mutual accounts between Desmond's and the decedent, as follows:

Promissory note due Desmond's.....	\$ 80,283.30
Interest on note to date of death.....	3,231.20
Advances on open account.....	27,094.51

Total due Desmond's at date of death.	110,690.01
Plus Additional interest on note to date of claim	470.05

Total due Desmond's at date of claim.	111,079.06
---------------------------------------	------------

Less Compensation due decedent in form of bonus at date of death.....	\$ 80,517.00
<hr/>	
Net amount due Desmond's and al- lowed as a claim.....	\$ 30,562.06
<hr/>	

VII.

Under a Petition for Order to Borrow Money on Unsecured Note, filed herewith, the executors propose to pay to Desmond's the full amount of decedent's aforesaid indebtedness plus interest, in the total sum of \$111,079.06; and to receive from Desmond's the sum of \$80,517.00 specifically as compensation due to the decedent in the form of a bonus at the time of his death. As a result of said mutual payments, Desmond's claim against the estate will thereby be fully paid; and the amount of \$80,517.00 received specifically as compensation due to the decedent in the form of a bonus at the time of his death shall become available to the Executors for distribution.

VIII.

By the terms of the Will the net estate, being in excess of \$250,000.00, is to be distributed to your petitioning Trustees. Of the total net estate approximately 60% is to be held in trust for the lives of Nurma W. Huesman and Carol Ann Huesman Marcato; and the balance is to be distributed to certain named beneficiaries within a period of five years after distribution to Trustees. One of said beneficiaries is Loyola University of Los Angeles,

Regents' Fund, which is entitled to a sum of money equal to approximately 5% of the Trusteed property, amounting to approximately \$98,000.00.

IX.

Loyola University is an educational institution located in Los Angeles, California. Said institution is in need of cash funds and desires a partial distribution of the bequest in its favor under decedent's will in the amount of said bonus, to wit, the sum of \$80,517.00.

X.

No Inheritance Taxes due to the State of California have been determined or paid; but the bequest made for the benefit of Loyola University is not subject to said California Inheritance Tax by reason of the fact that said Loyola University is an educational institution which is exempt from said California Inheritance Tax. Written consent of the State Controller to the proposed distribution is filed herewith.

XI.

Under a petition for partial distribution, filed herewith, the Executors have requested that the Court make an order requiring and directing that the Executors receiving said sum of \$80,517.00 from Desmond's specifically as compensation due to decedent in the form of a bonus at the time of his death, shall deliver said specific sum to Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as Trus-

tees under the Will of Ralph R. Huesman, deceased, for the purpose of making immediate distribution of said specific sum to Loyola University of Los Angeles, Regents' Fund, in partial satisfaction of its bequest under the Will of said Ralph R. Huesman, deceased.

XII.

Upon the granting of said Order by the Court, and distribution of said sum in accordance therewith by the Executors, said sum of \$80,517.00 received from Desmond's specifically as compensation due to the decedent in the form of a bonus at the time of his death, shall become the sole estate of said Testamentary Trust. There will be no liabilities to any creditors under said Trust. The said legacy or share of the estate set forth above may be distributed to Loyola University, Regents' Fund, as the institution entitled thereto, without loss to the creditors or injury to the Trust Estate, or any person interested therein. The State Controller has, in writing, consented to said distribution. The Trustees deem it unnecessary that the legatee give a bond and request that such bond be dispensed with.

XIII.

The heirs at law of said deceased are:

Name: Nurma W. Huesman.

Age: Adult.

Residence (Street and City): 10811 Ambazac Way, Bel Air, Los Angeles 24, California.

Name: Carroll Ann Huesman Marcato.

Age: Adult.

Residence (Street and City): 24 East 82nd St., New York City, N. Y.

The legatees and devisees are:

Name, Nurma W. Huesman; age, adult; residence (street and city), 10811 Ambazac Way, Bel Air, Los Angeles 24, California.

Name, Carroll Ann Huesman Marcato; age, adult; residence (street and city), 24 East 82nd St., New York City, N. Y.

Name, Fred H. Huesman; age, adult; residence (street and city), 728 E. Windsor Rd., Glendale, Calif.

Name, Mathilda Josephine Huesman Doll; age, adult; residence (street and city), 1219 Viscano Dr., Glendale, Calif.

Name, Frank F. Huesman; age, adult; residence (street and city), 915 E. Lomita Ave., Glendale, Calif.

Name, Fred B. Huesman; age, adult; residence (street and city), 616 So. Broadway, Los Angeles, Calif.

Name, Marcellus Doll; age, adult; residence (street and city), 714 N. Linden Dr., Beverly Hills, Calif.

Name, Mary Gerard Huesman; age, adult; residence (street and city), 728 E. Windsor Rd. Glendale, Calif.

Name, Dr. Henry M. Rooney; age, adult; residence (street and city), 832 S. Windsor Rd., Los Angeles, Calif.

Name, Mrs. May Rooney; age, adult; residence (street and city), 832 S. Windsor Rd., Los Angeles, Calif.

Name, Leonora Zinner; age, adult; residence (street and city), 1604 Fremont Ave., South Pasadena, Calif.

Name, Mrs. Gregory Haran; age adult; residence (street and city), 456 Redwood Road, Box #456, Corte Madera, California.

Name, Loyola University of Los Angeles; residence (street and city), 7101 W. 80th St., Los Angeles, Calif.

Name, Employees' Retirement Plan of Desmond's; residence (street and city), 616 So. Broadway, Los Angeles, Calif.

XIV.

Wherefore, Petitioners pray that the Clerk shall set this petition for hearing by the Court; that notice of the time and place fixed for such hearing shall be given in the manner required by law; that the Court make an order instructing, requiring and directing that said sum of \$80,517.00, received by the Executors from Desmond's specifically as compensation due to the decedent in the form of a bonus at the time of his death, and delivered, under Order of the Court, as a specific sum to Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as Trustees

under the Will of Ralph R. Huesman, deceased, for the purpose of making immediate distribution of said specific sum to Loyola University of Los Angeles, Regents' Fund in partial satisfaction of its bequest under the Will of said Ralph R. Huesman, deceased; shall be delivered as a specific sum to Loyola University of Los Angeles, Regents' Fund, in partial satisfaction of its bequest under the Will of said Ralph R. Huesman, deceased; that the Court order that no bond shall be required by reason of any decree of partial distribution granted hereunder; and that the Court make any and all other necessary and proper orders that may be required in the premises.

Dated: April 6, 1945.

.....
Nurma W. Huesman,

**FARMERS AND MERCHANTS NATIONAL
BANK OF LOS ANGELES,**

By R. G. LEMMON,
Assistant Trust Officer.

.....
Neil S. McCarthy,
Attorney for Petitioners.

State of California,
County of Los Angeles—ss.

Nurma W. Huesman, being sworn, says: That she is one of the petitioners in the above-entitled action;

that she has read the foregoing petition and knows the contents thereof; that the same is true of her own knowledge, except as to the matters which are therein stated on her information or belief and as to those matters that she believes it to be true.

NURMA W. HUESMAN.

Subscribed and sworn to before me on April 6, 1945.

MELBA S. DEEMING,
Notary Public in and for
Said County and State.

State of California,
County of Los Angeles—ss.

R. G. Lemmon, being sworn, says: That he is the Assistant Trust Officer of the Farmers and Merchants National Bank of Los Angeles, a national banking association, one of the petitioners in the above-entitled action, and that he is authorized to make this verification for and on behalf of said corporation; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

R. G. LEMMON.

Subscribed and sworn to before me on April 6, 1945.

G. F. BIETSCH,
Notary Public in and for
Said County and State.

EXHIBIT C

No. 233,009

Estate of RALPH R. HUESMAN,

Deceased.

In the Matter of

The Estate of RALPH R. HUESMAN,

Deceased.

PETITION FOR PARTIAL
DISTRIBUTION

To the Above-Entitled Superior Court:

The petition of Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, respectfully shows that:

I.

Petitioners are the duly appointed, qualified and acting executors under the Will of Ralph R. Huesman, deceased, and are the trustees named in said Will to whom the property will be distributed in this proceeding as trustees, and join in this petition as such executors and trustees.

II.

The estate has been appraised by an Inheritance Tax Appraiser in the sum of \$3,749,196.98, as shown by the inventory and appraisement on file herein.

III.

The first Notice to Creditors was published on June 21, 1944, and the time for filing claims has

expired. Claims and indebtedness against the estate for ordinary executors and attorneys fees and commissions will amount to approximately \$150,000.00.

IV.

The net value of the estate available for the payment of taxes and legacies and other charges is approximately \$3,599,000.00.

V.

Among the assets of the Estate of Ralph R. Huesman, deceased, and constituting a part of the corpus thereof, is an item of compensation due the decedent in the form of a bonus from Desmond's, a corporation, in the sum of \$80,517.00.

VI.

Among the claims filed and allowed is that of Desmond's, a corporation, which has been allowed in the sum of \$30,562.06, representing the balance of mutual accounts between Desmond's and the decedent, as follows:

Promissory note due Desmond's.....	\$ 80,283.30
Interest on note to date of death.....	3,231.20
Advances on open account	27,094.51

Total due Desmond's at date of death.	110,609.01
Plus additional interest on note to date of claim	470.05

Total due Desmond's at date of claim.	111,079.06
---------------------------------------	------------

Less compensation due decedent in form of bonus at date of death.....	80,517.00
Net amount due Desmond's and al- lowed as a claim	\$ 30,562.06

VII.

Under a Petition for Order to Borrow on Un-
secured Note, filed herewith, the executors propose
to pay to Desmond's the full amount of decedent's
aforesaid indebtedness plus interest, in the total
sum of \$111,079.06; and to receive from Desmond's
the sum of \$80,517.00 specifically as compensation
due to the decedent in the form of a bonus at the
time of his death. As a result of said mutual pay-
ments, Desmond's claim against the estate will
thereby be fully paid; and the amount of \$80,517.00
received specifically as compensation due to the de-
cedent in the form of a bonus at the time of his
death shall become available for distribution.

VIII.

By the terms of the Will the net estate, being
in excess of \$250,000.00, is to be distributed to Trus-
tees, who are the same persons as your petitioning
executors. Of the total net estate approximately
60% is to be held in trust for the lives of Nurma
W. Huesman and Carol Ann Huesman Marcato;
and the balance is to be distributed to certain named
beneficiaries within a period of five years after
distribution to trustees. One of said beneficiaries
is Loyola University of Los Angeles, Regents'

Fund, which is entitled to a sum of money equal to approximately 5% of the Trusteed Property, amounting to approximately \$98,000.00.

IX.

Loyola University is an educational institution located in Los Angeles, California. Said institution is in need of cash funds and desires a partial distribution of the bequest in its favor under decedent's will in the amount of said bonus, to wit, the sum of \$80,517.00.

X.

No Inheritance Taxes due to the State of California have been determined or paid; but the bequest made for the benefit of Loyola University is not subject to said California Inheritance Tax by reason of the fact that said Loyola University is an educational institution which is exempt from said California Inheritance Tax. Written consent of the State Controller to the proposed distribution is filed herewith.

XI.

The Estate is but little indebted. The State Controller has in writing consented to said distribution. The legacy or share of the Estate set forth above may be distributed to Loyola University, Regents' Fund, as the institution entitled thereto without loss to the creditors or injury to the Estate or any person interested therein. Sufficient assets will remain in the hands of the executors to pay all debts of administration. The executors deem it un-

necessary that the legatee give a bond and request that such bond be dispensed with.

XII.

The heirs at law of said deceased are:

Name: Nurma W. Huesman.

Age: Adult.

Residence (Street and City): 10811 Ambazac Way, Bel Air, Los Angeles 24, California.

Name: Carol Ann Huesman Marcato.

Age: Adult.

Residence (Street and City): 24 East 82nd St., New York City, N. Y.

The legatees and devisees are:

Name, Nurma W. Huesman; age, adult; residence (street and city), 10811 Ambazac Way, Bel Air, Los Angeles 24, California.

Name, Carol Ann Huesman Marcato; age, adult; residence (street and city), 24 East 82nd St., New York City, N. Y.

Name, Fred H. Huesman; age, adult; residence (street and city), 728 E. Windsor Rd., Glendale, Calif.

Name, Mathilda Josephine Huesman Doll; age, adult; residence (street and city), 1219 Viscano Dr., Glendale, Calif.

Name, Frank F. Huesman; age, adult; residence (street and city), 915 E. Lomita Ave., Glendale, Calif.

Name, Fred B. Huesman; age, adult; residence (street and city), 616 So. Broadway, Los Angeles, Calif.

Name, Marcellus Doll; age, adult; residence (street and city), 714 N. Linden Dr., Beverly Hills, Calif.

Name, Mary Gerard Huesman; age, adult; residence (street and city), 728 E. Windsor Rd., Glendale, Calif.

Name, Dr. Henry M. Rooney; age, adult; residence (street and city), 832 So. Windsor Rd., Los Angeles, Calif.

Name, Mrs. May Rooney; age, adult; residence (street and city), 832 S. Windsor Rd., Los Angeles, Calif.

Name, Leonora Zinner; age, adult; residence (street and city), 1604 Fremont Ave., South Pasadena, Calif.

Name, Mrs. Gregory Haran; age, adult; residence (street and city), 456 Redwood Road, Box #456, Corte Madera, California.

Name, Loyola University of Los Angeles; residence (street and city), 7101 W. 80th St., Los Angeles, Calif.

Name, Employees' Retirement Plan of Desmond's; residence (street and city), 616 So. Broadway, Los Angeles, Calif.

XIII.

Wherefore, Petitioners pray that the clerk shall set this petition for hearing by the Court; that

notice of the time and place fixed for such hearing shall be given in the manner required by law; that the Court make an order requiring and directing that the executors receiving said sum of \$80,517.00 from Desmond's specifically as compensation due to the decedent in the form of a bonus at the time of his death, shall deliver said specific sum to Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as Trustees under the Will of Ralph R. Huesman, deceased, for the purpose of making immediate distribution of said specific sum to Loyola University of Los Angeles, Regents' Fund, in partial satisfaction of its bequest under the Will of said Ralph R. Huesman, deceased; that the Court order that no bond shall be required by reason of any decree of partial distribution granted hereunder; and that the Court make any and all other necessary and proper orders that may be required in the premises.

Dated: April 6, 1945.

/s/ NURMA W. HUESMAN.

FARMERS AND MERCHANTS NATIONAL
BANK OF LOS ANGELES,

By R. G. LEMMON,
Assistant Trust Officer.

/s/ NEIL S. McCARTHY,
Attorney for Petitioners.

State of California,
County of Los Angeles—ss.

Nurma W. Huesman, being sworn, says: That she is one of the petitioners in the above-entitled action; that she has read the foregoing petition and knows the contents thereof; that the same is true of her own knowledge, except as to the matters which are therein stated on her information or belief, and as to those matters that she believes it to be true.

NURMA W. HUESMAN.

Subscribed and sworn to before me on April 6, 1945.

MELBA S. DEEMING,
Notary Public in and for
Said County and State.

State of California,
County of Los Angeles—ss.

R. G. Lemmon, being sworn, says: That he is the Assistant Trust Officer of the Farmers and Merchants National Bank of Los Angeles, a national banking association, one of the petitioners in the above-entitled action, and that he is authorized to make this verification for and on behalf of said corporation; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information

or belief, and as to those matters he believes it to be true.

R. G. LEMMON.

Subscribed and sworn to before me on April 6, 1945.

G. F. BIETSCH,

Notary Public in and for
Said County and State.

EXHIBIT D

In the Superior Court in the State of California
in and for the County of Los Angeles

No. 233,009

In the Matter of
The Estate of RALPH R. HUESMAN,
Deceased.

ORDER INSTRUCTING TESTAMENTARY TRUSTEES TO MAKE PARTIAL DIS- TRIBUTION

Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, being the Executors under the Will of Ralph R. Huesman, Deceased, and also being the persons named as Trustees in said Will of Ralph R. Huesman, Deceased, having filed herein on the 10th day of April 1945, their petition praying for an order instructing, requiring and directing that a certain sum of Eighty Thousand Five Hundred

Seventeen Dollars (\$80,517.00) should be distributed to Loyola University of Los Angeles, Regents' Fund, in partial satisfaction of its bequest under Will of Ralph R. Huesman, Deceased, and said petition this day coming on regularly to be heard; proof having been made to the satisfaction of the Court, the Court finds that notice of hearing on said petition has been regularly given for the period and in the manner required by it under Sections 1120 and 1200 of the Probate Code; and no person appearing to contest the same;

The Court after hearing the evidence, finds that all the allegations of said petition are true; that Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, are the Trustees appointed by the Will of Ralph R. Huesman, Deceased; that said persons have accepted the trusts created and declared in said Will; that among the assets of said Estate and constituting a part of the corpus thereof, is an item of compensation due the decedent in the form of a bonus from Desmond's, a corporation, in the sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00); that among the claims filed and allowed is that of Desmond's, a corporation, amounting in gross to One Hundred Eleven Thousand Seventy-nine 6/100 Dollars (\$111,079.06); that under an order authorizing said Executors to borrow money on an unsecured note, granted by this Court on this day, the Executors will borrow One Hundred Ten Thousand Dollars (\$110,000.00) and pay to Desmond's, a corporation, the full amount

of decedent's aforesaid indebtedness plus interest in the total amount of One Hundred Eleven Thousand Seventy-nine 6/100 Dollars (\$111,079.06) and will receive from Desmond's, the sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00), specifically as compensation due to the decedent in the form of a bonus at the time of his death; that as a result of said mutual payments, Desmond's claim against the Estate will thereby be fully paid; and the amount of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) received specifically as compensation due to the decedent in the form of a bonus at the time of his death, shall become available for distribution;

That by the terms of the Will, the net estate, being in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00), is to be distributed to Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as Trustees under the Will of Ralph R. Huesman, Deceased; that one of the beneficiaries of said testamentary trust is Loyola University of Los Angeles, Regents' Fund, which is entitled to a sum of money equal to approximately Five Per cent (5%) of the trustee property, amounting to approximately Ninety Eight Thousand Dollars (\$98,000.00); that said Loyola University is an educational institution located in Los Angeles, California; that said institution is in need of cash funds and desires a partial distribution of the bequest in its favor under decedent's Will in the amount of said bonus, to wit, the sum of Eighty Thousand Five

Hundred Seventeen Dollars (\$80,517.00); that the State Comptroller through the Assistant Inheritance Tax Attorneys, has consented to the granting of the petition for partial distribution, without first having the California Inheritance Taxes determined and paid;

That under an order and decree of partial distribution granted by this Court on this day, the Executors, upon receiving said sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) from Desmond's, a corporation, specifically as compensation due the decedent in the form of a bonus at the time of his death, shall deliver said specific sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) to Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as Trustees under the Will of Ralph R. Huesman, Deceased; that said sum constitutes the sole estate of said testamentary trust; that there are no liabilities to any creditors under said trust; that the said legacy or share of the trust estate set forth above may be distributed to Loyola University, Regents' Fund, as the institution entitled thereto, without loss to the creditors or injury to the trust estate, or any person interested therein; and that it is unnecessary that the legatee give bond.

It Is Therefore Ordered and Decreed that the said sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) received by Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as Ex-

ecutors of the Estate of Ralph R. Huesman, Deceased, from Desmond's, a corporation, specifically as compensation due to the decedent in the form of a bonus at the time of his death, and delivered under order of this Court, as a specific sum to Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as Trustees under the Will of Ralph R. Huesman, Deceased, shall be delivered as a specific sum to Loyola University of Los Angeles, Regents' Fund, in partial satisfaction of its bequest under the Will of Ralph R. Huesman, Deceased; and that no bond shall be required by reason of any distribution granted hereunder.

Done in open Court this 30th day of April, 1945.

NEWCOMB CONDEE,
Judge of the Superior Court.

EXHIBIT E

In the Superior Court of the State of California
In and for the County of Los Angeles

No. 233,009

In the Matter of
The Estate of RALPH R. HUESMAN,
Deceased.

ORDER AND DECREE OF PARTIAL DISTRIBUTION

Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los An-

geles, Executors under the Will of Ralph R. Huesman, Deceased, having filed herein on the 10th day of April, 1945, their petition and Supplement to Petition praying for an order allowing and distributing to themselves as Trustees under the Will of Ralph R. Huesman, Deceased, a certain portion of said Estate to which the Trustees are entitled under the terms of the Will, and directing said executors to deliver said property to themselves as said Trustees, and further directing said Trustees to deliver said property to Loyola University, Regents' Fund, as the ultimate beneficiary of said property under said trust; and said petition this day coming on regularly to be heard; proof having been made to the satisfaction of the Court, the Court finds that notice of the hearing of said petition has been regularly given for the period and in the manner required by Section 1200 of the Probate Code; and no person appearing to contest the same;

The Court, after hearing the evidence, finds that all the allegations of said petition and Supplement to Petition are true; that among the assets of said Estate and constituting a part of the corpus thereof, is an item of compensation due the decedent in the form of a bonus from Desmond's, a corporation, in the sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00); that among the claims filed and allowed is that of Desmond's, a corporation, amounting in gross to One Hundred Eleven Thousand Seventy-nine 6/100 Dollars (\$111,079.06); that under an order authorizing said Executors to borrow money on an unsecured note, granted by this Court

on this day, the Executors will pay to Desmond's, a corporation, the full amount of decedent's aforesaid indebtedness plus interest in the total amount of One Hundred Eleven Thousand Seventy-nine 6/100 Dollars (\$111,079.06) and will receive from Desmond's, the sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00), specifically as compensation due to the decedent in the form of a bonus at the time of his death; that as a result of said mutual payments, Desmond's claim against the Estate will thereby be fully paid; and the amount of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) received specifically as compensation due to the decedent in the form of a bonus at the time of his death, shall become available for distribution;

That by the terms of the Will, the net estate, being in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00), is to be distributed to Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as trustees under said Will of Ralph R. Huesman, Deceased; that one of the beneficiaries of said testamentary trust in Loyola University of Los Angeles, Regents' Fund, which is entitled to a sum of money equal to approximately Five Percent (5%) of the trustee property, amounting to approximately Ninety Eight Thousand Dollars (\$98,000.00); that said Loyola University is an educational institution located in Los Angeles, California; that said institution is in need of cash funds and desires a partial distribution of the bequest in its favor under decedent's Will in

the amount of said bonus, to wit, the sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00); that the State Comptroller through the assistant Inheritance Tax Attorneys, has consented to the granting of the petition for partial distribution, without first having the California Inheritance Taxes determined and paid; that the Estate is but little indebted; that the legacy or share of the Estate set forth above may be distributed to said Trustees and then to Loyola University, Regents' Fund, as the institution ultimately entitled thereto, without loss to the creditors or injury to the Estate or any person interested therein; that sufficient assets will remain in the hands of the Executors to pay any debts of administration; that it is unnecessary that the legatee give a bond;

It is Therefore Ordered and Decreed that Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as Executors of the Estate of Ralph R. Huesman, Deceased, upon receiving said certain sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) from Desmond's, a corporation, specifically as compensation due to the decedent in the form of a bonus at the time of his death, shall deliver said specific sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) to Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants Naitonal Bank of Los Angeles, as Trustees under the Will of Ralph R. Huesman, Deceased; and said Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as said

Trustees under the Will of Ralph R. Huesman, Deceased, shall distribute said specific sum of Eighty Thousand Five Hundred Seventeen Dollars (\$80,517.00) to Loyola University of Los Angeles, Regents' Fund, in partial satisfaction of its bequest under the Will of said Ralph R. Huesman, Deceased; and that no bond shall be required by reason of any distribution order herein made.

Done in open Court this 30th day of April, 1945.

NEWCOMB CONDEE,
Judge of the Superior Court.

EXHIBIT F

Form 1041

1944

Treasury Department
Internal Revenue Service

United States
Fiduciary Income Tax Return
(For Estates and Trusts)

For Calendar Year 1944
or fiscal year beginning May 1, 1944, and ending April 30, 1945.

(File this return with Collector of Internal Revenue not later than the 15th day of the third month following the close of the taxable year.)

(Print Names and Address Plainly Below)

Name of Estate or Trust: Estate of Ralph R. Huesman, Deceased.
Estate \times .

Nurma W. Huesman,
10811 Ambazac Way, W. Los Angeles, California.

Name and Address of Fiduciary:

Fred B. Huesman,
616 S. Broadway, Los Angeles, California.
Farmers & Merchants Nat'l Bank,
401 S. Main, Los Angeles 54, California.

Item and Instruction No.	Income
1. Dividends	\$ 50,465.00
2. Interest on bank deposits, notes, corporation bonds, etc. (except interest to be reported in item 3)	16.35
4. Interest on Government obligations, etc.: (b) Subject to normal tax and surtax (from Schedule B, line (i)).....	141.78
9. Other income. (State nature of income).....	80,517.00
10. Total income in items 1 to 9.....	<u>\$131,140.13</u>

Deductions

11. Interest. (Explain in Schedule H).....	\$ 3,701.25
12. Taxes. (Explain in Schedule H).....	2,250.77
13. Other deductions authorized by law. (Explain in Schedule H) I.R.C. 126 (Schedule).....	37,359.89
14. Total deductions in items 11 to 13.....	<u>\$ 43,311.91</u>
15. Balance (item 10 less item 14).....	\$ 87,828.22
16. Less: Amount distributable to beneficiaries (total of column 2, Schedule A, plus line (f), column 2a, Schedule B).....	80,517.00
17. Net income (taxable to fiduciary) (item 15 less item 16)	<u>7,311.22</u>

Computation of Tax

18. Net income (item 17, above).....	\$ 7,311.22
19. Less: Exemption (\$500 for an estate; \$100 for a trust)	500.00
20. Balance (surtax net income) (item 18 less item 19)	6,811.22
22. Balance subject to normal tax (item 20 less item 21)	6,811.22
23. Surtax on item 20. (Use Surtax Table in Instruction 23)	1,603.37
24. Normal tax (3% of item 22).....	204.34
25. Total Income Tax (item 23 plus item 24) (or line 14, Schedule E).....	1,807.71
28. Balance of Income Tax.....	<u>1,807.71</u>

Schedule A.—Beneficiaries' Shares of Income and Credits
 (Include as beneficiaries persons to whom amounts were paid or set aside for religious, charitable, etc., purposes.) (See Instructions 4 and 16.)

1. Name and address of each beneficiary (Designate nonresident aliens, if any)	2. Taxable income exclusive of (a) in- terest on Govern- ment obligations subject to surtax only and (b) divi- dends to be report- ed in column 8.
Nurma W. Huesman, Fred B. Huesman and Farmers & Merchants Nat'l Bank as Trus- tees under the Will of Ralph R. Huesman, Dec'd, Los Angeles, California.....	\$80,517.00
Totals	\$80,517.00

Schedule B.—Interest on Government Obligations, Etc.

(See Instruction 4)

	Subject to Normal Tax and Surtax	Interest received or accrued during the year
(g) Treasury Notes issued on or after Dec. 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof		\$141.78
(i) Balance of Interest (Enter as Item 4(b) Page 1).....		\$141.78

Schedule C.—Blank

Schedule D.—Blank

Schedule E.—Blank

Schedule F.—Blank

Schedule G.—Blank

Schedule H.—Blank

Questions

1. Was an income tax return filed for the preceding year? Yes. If so, to which collector's office was it sent? Decedent's return 6th Calif.
2. Date estate or trust was created: May 3, 1944.
3. If copy of will or trust instrument and statement required under General Instruction I have been previously furnished, state when and where filed: with Fed. Estate Tax return.
4. Check whether this return was prepared on the cash or accrual basis.

5. Did the estate or trust at any time during the taxable year own directly or indirectly any stock of a foreign corporation or of a personal holding company as defined in section 501 of the Internal Revenue Code? (Answer "Yes" or "No.") No. If answer is "Yes," attach list showing name and address of each such corporation and amount of stockholdings.
6. If return is for a trust, state name and address of grantor
7. If return is for an estate, has a United States Estate Tax Return been filed? (Answer "Yes" or "No.") No. If answer is "No," will such a return be filed? "Yes" "No" "Uncertain" (Check which.)

Affidavit (See Instruction F)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return.

W. D. BAKER,

(Signature of fiduciary or officer representing fiduciary.)

FRANCIS J. McENTEE,

(Signature of person (other than taxpayer or agent) preparing return.)

DEMPSEY, THAYER, DEIBERT &
KUMLER,

(Name of firm or employer, if any.)

Subscribed and sworn to before me this 11th day of July, 1945.

MELBA S. DEEMING,

(Signature of officer administering oath.)

Filed July 12, 1945.

Estate of Ralph R. Huesman, Deceased

To the Commissioner of Internal Revenue:

**ELECTION TO CLAIM CERTAIN EXPENSES
PAID BY EXECUTORS AS INCOME TAX
DEDUCTIONS IN LIEU OF DEDUCTIONS
FOR ESTATE TAX PURPOSES**

The undersigned Executors are, under the provisions of Section 126 of the Internal Revenue Code, claiming as deductions in the income tax return filed herewith for the Estate of Ralph R. Huesman, Deceased, the interest and taxes paid by the executors in respect of the decedent which were not properly allowable to the decedent in respect of the taxable period in which fell the date of his death or a prior period, and by making this election said Executors hereby waive the right to have such items allowed at any time as deductions from the gross estate for Federal Estate tax purposes. Such waiver is in conformity with the provisions of Section 162 (e) of said Code.

Dated: July 10, 1945.

**THE FARMERS & MERCHANTS NATIONAL
BANK OF L. A.**

By
Co-executor.

\$250,000, the provisions of the will involved in the instant case are as follows:

Article V.

I give, devise and bequeath all the rest, residue, and remainder of my estate, real, personal and mixed, of every kind and nature and wherever situated, which I may own at the time of my death, and all other property over which I may have any power of disposition (all of said property being hereinafter referred to as the "Trusted Property"), to the Trustees hereinafter named, to have and to hold upon the following trusts and conditions:

E * * *

5. The Trustees shall pay and distribute a sum of money equal to ten per cent (10%) of the Trusted Property as follows: To my friend Dr. Henry M. Rooney, and if he be deceased to his wife, Mrs. May Rooney, the sum of Two Thousand Dollars (\$2,000.00); to my loyal secretary and employee Leonora Zinner, the sum of Two Thousand Dollars (\$2,000.00); and to Mrs. Gregory Haran, my former secretary who rendered very loyal service to me, the sum of Two Thousand Dollars (\$2,000.00); * * * and the balance of said sum of money shall be paid and distributed by the Trustees to the following named organizations and in the proportions as follows: To Loyola University of Los Angeles, Regents' Fund, five-tenths (5/10th); * * *. Such conversion of Trusted Property into money and pay-

ments and distributions made to said organizations shall be made by the Trustees within five (5) years after distribution to the Trustees and shall be made at such time and in such amounts as may be convenient for the Trustees in consideration of the condition of the Trust Estate, and the Trustees may exercise in their sole discretion as to when and in what amounts such payments and distributions shall be made within said period of five (5) years. * * *

At the time of his death, decedent was president of Desmond's, a retail merchandising corporation carrying on business in southern California. There was due and owing decedent from Desmond's at the time of his death, the sum of \$80,517 as a bonus for services rendered by him prior to his death. This amount was included in the Federal estate tax return as part of the gross estate under section 811 of the Internal Revenue Code, as the value of decedent's claim against Desmond's.

On April 10, 1945, the executors of the petitioner estate, in that capacity and their capacity as testamentary trustees, petitioned the appropriate court for instructions, and at the same time filed a petition requesting an order for partial distribution.

In the petition for instructions the following allegations appeared:

VI.

Among the claims filed and allowed is that of Desmond's, a corporation, which has been allowed in the sum of \$30,562.06, representing the balance of mutual account between Desmond's and the decedent, as follows:

Estate of Ralph R. Huesman, Deceased

Fiduciary Income Tax for

Fiscal Year Ended April 30, 1945

Income	
Dividends:	
Desmond's	\$ 50,000.00
Farmers & Mer. Nat'l. Bank	45,00
Pacific Mutual L. Ins. Co.	15.00

Total	\$ 50,465.00
Interest:	
Farmers & Mer. Nat'l. Bank	12.50
Pacific Mutual L. Ins. Co.	3.85

16.35	
Government Bonds	\$ 239.95
Less—Amount accrued to date of death, included in	
estate tax return	98.17

Other Income:	
Bonus from Desmond's	\$ 80,517.00

Total Income	\$ 131,140.13

*Deductions

Interest:	
Paid to Desmond's on note	\$ 3,231.20
Paid to Desmond's on note	\$ 470.05

	\$ 3,701.25
Taxes:	
Personal Property Tax	\$ 96.48 (State)
R. E. Seal Beach	44.92 (State)
State Inc. Tax—1943	1,006.87
State Inc. Tax—1943	1,006.87
State Inc. Tax—1944	95.63

	\$ 2,250.77

*Election under Internal Revenue Code, Section 162(e). Items not claimed on Federal Estate Tax nor State Inheritance Tax.

Estate of Ralph R. Huesman, Deceased

Fiduciary Income Tax for

Fiscal Year Ended April 30, 1945

Deduction for amount of Federal Estate Tax and California Inheritance Tax—attributable to \$80,517.00 included in gross estate, to be taken on Fiduciary Income Tax Returns.

Net taxable Estate	\$2,303,107.18
Less Bonus	\$80,517.00

Net Estate would have been	\$3,222,590.18
Less Exemption	\$100,000.00

	\$3,122,590.18

Basic Tax	
On \$3,000,000.00	\$ 238,500.00
\$122,590.18 @ 12%.....	\$ 14,710.82
Gross Basic	\$ 253,210.82
Less 80% (Calif.)	\$ 202,568.66

Net Basic Tax	\$ 50,642.16

Tentative Tax	
On \$3,000,000.00	\$1,263,200.00
162,590.18 @ 56%.....	\$ 91,050.50
Total Tax	\$1,354,250.50
Less Gross Basic Tax	\$ 253,210.82

Net Tentative Tax	\$ 1,101,039.68

Internal Revenue Code, Sec. 126, F. E. Tax including
bonus

Internal Revenue Code, Sec. 126, F. E. Tax excluding
bonus

Difference=deduction attributable to \$80,517.00.

State of California Inh. Tax including bonus

State of California Inh. Tax excluding bonus

Personal Inc. Tax Code, Section 1726).....

Internal Revenue Code, Sec. 126, F. E. Tax including bonus	\$ 1,180,041.73
Internal Revenue Code, Sec. 126, F. E. Tax excluding bonus	\$ 1,151,681.84

	\$ 37,359.89
State of California Inh. Tax including bonus	\$ 210,298.29
State of California Inh. Tax excluding bonus	\$ 202,568.66

Personal Inc. Tax Code, Section 1726)	\$ 7,729.63

EXHIBIT 4

Estate of Ralph R. Huesman, Deceased

Transcript of Entries

From Original Entry Books

Estate of Ralph R. Huesman, Deceased. Journal Entries—J 1.

5.3-'44

Acct.

Credit

Inventory of Assets

Debit

Credit

Cash in bank—See 1st Natl.	110	\$ 19,682.71
—Chem. Bk. & Tr. Co. of N. Y.	110	9,500.00
Claims for disability benefits (Cont. Casnaly Co.)	120	1,018.25
Real Estate, Seal Beach, Lots 32 & 36, Block 7, Bay City Tract	140	1,000.00
U. S. Savings Bonds, Series E, Dated 1-1-42 \$400.00	130	306.00
U. S. Savings Bonds, Series E, Dated 2-1-42 \$200.00	130	153.00
U. S. Treasury Bonds, 1964-69, 2½%, Dated 9-15-43, due Stock	130	5,000.00
U. S. Treasury Bonds, 1965-70, 2½%, Dated 2-1-44, due 3-15-69, 5M	130	5,000.00
Accrued interest receivable 1964-69	120	3,003.75
Accrued interest receivable 1965-70	120	79.01
Stock—Desmonds \$100 p.v. 990.95 shs.	130	3,686.395.60
—Farmers and Merchants Nat'l Bank of L. A. \$100 p.v. 25 shs.	130	11,500.00
—Merchants Petroleum Co. Inc. \$100 p.v. 500 shs.	130	150.00
—Wilshire Blvd. Center, Ltd. 6% cum. pfld. no par, 3250 shs.	130	6,402.50
Membership—Bel Air Country Club	190	500.00
—California Club	190	1,200.00
—L. A. Country Club	190	2,525.00
Automobile, Cadillac 8 Touring Sedan, 1941 model 60-8, Eng. No. 6342221	150	202.00
Jewelry	150	
Account receivable from Pacific Mutual Life Insurance Co.	120	
Original amount \$2,080.00; Unpaid balance \$1,934.40	120	967.20
Estate principal	290	

To set up original assets of this Estate as shown by Inventory and Appraisement filed 11/30/44 and Amendment dated 2/2/45.

Cash Receipts—R 1

4-30-'45

Credit

Debit

Journal Entries—J 6—(Continued)	Debit	Credit
Membership—Bel Air Country Club.....	No.	500.00
—California Club	190	No value
—L. A. Country Club.....	190	1,200.00
Interest in Gov't Property in Alaska.....	190	No value
Distribution of Principal.....	250	\$0,517.00

To record distribution of assets to testamentary trust per Court Order December 13, 1945.

Note: Account numbers are for following accounts on Estate books.

110.....Principal cash	Debit	Credit
120.....Accounts and notes receivable	No.	No.
130.....Securities	110	\$ 32,251.13
140.....Real Estate	120	97,773.88
150.....Personal property	120	14,400.00
190.....Other assets	130	150,000.00
210.....Liabilities payable from principal	130	34,216.51
280.....Distributions of principal	130	1,516.30
290.....Ralph R. Huesman Estate Principal	130	306.00
310.....Income cash	130	153.00

Journal Entries—J 1 12-13-45	Debit	Credit
Principal cash	No.	No.
Note receivable—Wilshire Blvd. Center.....	110	\$ 32,251.13
Accounts receivable—Wilshire Blvd. Center.....	120	97,773.88
U. S. Ctf. Ind. Series E, 1946, 150M.....	120	14,400.00
Tax refund bonds.....	130	150,000.00
Tax refund bonds.....	130	34,216.51
Series E savings bonds, \$400.....	130	1,516.30
Series E savings bonds, \$200.....	130	306.00
Series E savings bonds, \$200.....	130	153.00
U. S. Treasury bonds, 1964-69, 5M.....	130	5,000.00
U. S. Treasury bonds, 1965-70, 3M.....	130	3,003.75
U. S. Treasury bonds, 1965-70, 10M.....	130	100,000.00
U. S. Ctf. Ind. Series D, 1946, 200M.....	130	200,000.00
Stock—F. & M. Nat'l Bank, 54 shs.....	130	14,040.00
—F. & M. Nat'l Bank, 50 shs.....	130	11,500.00
—Merchants Peir Co., 500 shs.....	130	150.00
—Richfield Oil Corp., 3 shs.....	130	25.12
—Satway Terminal Corp., 50 shs.....	130	No value
—Wilshire Blvd. Center, Common, 7600 shs.....	130	86,564.00
Pfd., 5750 shs.....	130	12,190.00
Pfd., 3250 shs.....	130	6,402.50
—Desmond's, Inc., 10,000 shs.....	130	1,000,000.00
Real Estate		
Ambazae Way.....	140	25,000.00
Wilshire & Glendon.....	140	50,000.00
Bel Air lots.....	140	20,000.00
Westwood Blvd. lots.....	140	48,000.00
Bdwy. & Locust, Long Beach		
Seal Beach lots.....	140	360,000.00
Manhattan Beach property.....	140	1,000.00
Jewelry.....	140	40,000.00
Membership—Bel Air Country Club.....	150	202.00
—California Club	190	500.00
Interest in Alaska property.....	190	No value
Advance to Loyola.....	190	1,200.00
Prepaid insurance.....	190	No value
Note payable—Wilshire Blvd. Center.....	280	80,517.00
Note payable—Mutual Life Ins., N. Y.....	390	1,500.80
Trust Principal	220	\$ 71,000.00
Trust Principal	290	\$ 165,417.56
Trust Principal	290	2,170,994.43

To record the receipts of assets from the Estate of Ralph R. Huesman, and the assumption of liabilities in connection therewith.

Journal Entries—J 3 12-13-45	Debit	Credit
Distribution of Principal		
Trust Fund E.....	280	\$ 235,654.78
Advance to Loyola.....	280	\$ 80,517.00
Accounts payable		
Trust Fund E.....	210	155,137.78
To record distribution of assets to Trust Fund as shown.		
Huesman Trust Fund E		
Journal Entries—J 1 12-13-45	Debit	Credit
Accounts receivable—Trust # 2035.....	No.	No.
Advance distribution to Loyola.....	120	\$ 155,137.78
Trust Principal	280	80,517.00
To record allocation from Testamentary Trust, F. & M. Bank # 2035.	290	\$ 235,654.78

Note: Account numbers are for following accounts on trust books.	Debit	Credit
110.....Principal cash	No.	No.
120.....Accounts and notes receivable	120	\$ 155,137.78
130.....Securities	120	80,517.00
140.....Real estate	120	\$ 235,654.78
150.....Personal property	120	No value
190.....Other assets	120	No value
220.....Notes payable	120	No value
280.....Distributions of principal	120	No value
290.....Trust Principal	120	No value
390.....Prepaid expenses	120	No value

EXHIBIT H

Estate of Ralph R. Huesman, Deceased

No. 223,009

In the Matter of
The Estate of RALPH R. HUESMAN,
Deceased.

**PETITION FOR ORDER TO BORROW MONEY
ON UNSECURED NOTE**

To the Above-Entitled Superior Court:

The petition of Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles respectfully shows that:

I.

They are the duly appointed, qualified and acting executors of the Last Will and Testament of Ralph R. Huesman, deceased; and they are the trustees named in said Last Will and Testament;

II.

The estate of Ralph R. Huesman, deceased, has been appraised by the California State Inheritance Tax Appraiser at a value of \$3,749,196.98, as shown by the inventory and appraisement on file herein.

III.

The first notice to creditors was published on June 21, 1944, and the time for filing claims has expired.

IV.

Claims and indebtedness against the estate and

ordinary executors and attorneys fees and commissions will amount to approximately \$150,000.

V.

Among the claims filed and allowed is that of Desmond's, a California corporation, which has been allowed in the sum of \$30,562.06, representing the balance of mutual accounts between Desmond's and the decedent, as follows:

Promissory note due Desmond's.....	\$ 80,283.30
Interest on note to date of death.....	3,231.20
Advances on open account.....	27,094.51
Total due Desmond's at date of death.....	110,609.01
Plus Additional interest on note to date of claim	470.05
Total due Desmond's at date of claim....	111,079.06
Less Compensation due decedent in form of bonus at date of death.....	80,517.00
Net amount due Desmond's and allowed as a claim.....	\$ 30,562.06

VI.

By the terms of the will the net estate, being in excess of \$250,000.00, is to be distributed to Trustees, who are the same persons as your petitioning executors. Of the total net estate approximately 60% is to be held in trust for the lives of Nurma W. Huesman and Carol Ann Huesman Marcato; and the balance is to be distributed to certain named beneficiaries within a period of five years after distribution to Trustees. One of said beneficiaries is Loyola University of Los Angeles, Regents' Fund, which is entitled to a sum of money equal to approximately

5% of the Trusteed property, amounting to approximately \$98,000.

VII.

The executors propose to pay to Desmond's the full amount of decedent's aforesaid indebtedness plus interest, in the total sum of \$111,079.06; and to receive from Desmond's the sum of \$80,517.00 specifically as compensation due to the decedent in the form of a bonus at the time of his death. As a result of said mutual payments, Desmond's claim against the estate will thereby be fully paid.

VIII.

The executors further propose to pay the said sum of \$80,517.00 to themselves, as Trustees, for immediate distribution to Loyola University in partial satisfaction of its legacy, all as set forth in a petition for partial distribution filed herewith by your said petitioners as trustees.

IX.

The executors have consulted with Desmond's and said corporation has indicated its willingness that as soon as the executors pay to Desmond's the said sum of \$111,079.06, Desmond's will pay immediately to the executors said sum of \$80,517.00, representing the amount of compensation due in the form of a bonus at the date of decedent's death.

X.

The executors do not have sufficient cash on hand to carry out the plan set forth in the preceding paragraphs. The principal asset of the estate con-

sists of 9,995 shares of the capital stock of Desmond's, appraised at \$3,686,955.60 by the California State Inheritance Tax Appraiser. Said stock is unlisted and has no ready sale upon the market. The executors deem it inadvisable to sell any portion of the said stock at the present time. Upon said sale at a later date, however, the executors will have ample cash on hand to pay all claims, taxes and charges against the estate, including the present proposed loan of \$110,000.00.

XI.

For the purpose of procuring funds with which to carry out the aforesaid plan, the executors propose to borrow the sum of One Hundred Ten Thousand Dollars (\$110,000.00) from the Farmers and Merchants National Bank of Los Angeles for a period of three months, with interest at the rate of 2% per annum, and to make and execute an unsecured promissory note therefor. The Farmers and Merchants National Bank of Los Angeles has signified its willingness to make the loan upon the terms above specified and to extend said note in the event an extension should be requested.

XII.

Under the terms of the will, the trustees are given power to borrow money, with or without security, for any purpose, either from any of the Trustees individually or from others; to assume the payments of and to extend and renew any indebtedness incurred by testator or by his executors or trustees,

or secured by any property which may at any time form a part of the Trusted Property.

XIII.

It will be to the advantage of said estate to raise the required money to carry out the above plan by borrowing said money for the reasons set forth in detail in the preceding paragraphs.

XIV.

Wherefore, petitioners pray that an order be made and entered herein authorizing them, as Executors of the Last Will and Testament of Ralph R. Huesman, deceased, to borrow the sum of One Hundred Ten Thousand Dollars (\$110,000.00) from the Farmers and Merchants National Bank of Los Angeles, payable in three months, with interest at the rate of 2% per annum, payable at maturity, and to make and execute a promissory note therefor in the usual form and containing the usual and customary obligations, and authorizing them to renew said note from time to time upon like terms and conditions.

Dated: April 6th, 1945.

/s/ NURMA W. HUESMAN,

FARMERS AND MERCHANTS NATIONAL
BANK OF LOS ANGELES,

By R. C. LEMMON,

Assistant Trust Officer.

/s/ NEIL S. McCARTHY,
Attorney for Petitioners.

State of California,
County of Los Angeles—ss.

Nurma W. Huesman, being sworn, says: That she is one of the petitioners in the above-entitled action; that she has read the foregoing petition and knows the contents thereof; that the same is true of her own knowledge, except as to the matters which are therein stated on her information or belief and as to those matters that she believes it to be true.

NURMA W. HUESMAN.

Subscribed and sworn to before me on April 6, 1945.

MELBA S. DEEMING,
Notary Public in and for
Said County and State.

State of California,
County of Los Angeles—ss.

R. C. Lemmon, being sworn, says: That he is the Assistant Trust Officer of the Farmers and Merchants National Bank of Los Angeles, a national banking association, one of the petitioners in the above-entitled action, and that he is authorized to make this verification for and on behalf of said corporation; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

R. C. LEMMON.

Subscribed and sworn to before me on April 6th,
1945.

G. F. BIETSCH,
Notary Public in and for
Said County and State.

EXHIBIT J

Form 1041
Treasury Department
Internal Revenue Service

1945

United States
Fiduciary Income Tax Return
(For Estates and Trusts)

For Calendar Year 1945

or fiscal year beginning April 30, 1945, and ending March 31,
1946.

(File this return with Collector of Internal Revenue not later
than the 15th day of the third month following the close
of the taxable year.)

(Print Names and Address Plainly Below)

Name of Estate or Trust: CX-2035 Farmers & Mer. Nat'l Bank
of L. A.

Check Whether Estate , or Trust

Name and Address of Fiduciary: Nurma W. Huesman, Fred
B. Huesman and Farmers & Mer. Nat'l Bank of L. A., T/W
of Ralph R. Huesman, Deceased.

Item and Instruction No.	Income
-----------------------------	--------

5. Income from partnerships, and other fiduciaries (from Schedule C).....	\$ 80,517.00
--	--------------

10. Total income in items 1 to 9.....	\$ 80,517.00
---------------------------------------	--------------

Deductions

14. Total deductions in items 11 to 13.....	None
---	------

15. Balance (item 10 less item 14).....	\$ 80,517.00
---	--------------

16. Less: Amount distributable to beneficiaries (total of column 2, Schedule A, plus line (f), column 2a, Schedule B).....	80,517.00
--	-----------

17. Net income (taxable to fiduciary) (item 15 less item 16)	None
---	------

Computation of Tax

18. Net income (item 17, above).....	None
20. Balance (surtax net income) (item 18 less item 19)	None
22. Balance subject to normal tax (item 20 less item 21)	None
25. Total Income Tax (item 23 plus item 24) (or line 14, Schedule E).....	None
28. Balance of Income Tax.....	None

Schedule A.—Beneficiaries' Shares of Income and Credits
(Include as beneficiaries persons to whom amounts were paid or set aside for religious, charitable, etc., purposes.) (See Instructions 4 and 16.)

1. Name and address of each beneficiary (Designate nonresident aliens, if any)	2. Taxable income exclusive of (a) interest on Govern- ment obligations subject to surtax only and (b) divi- dends to be report- ed in column 8.
Loyola University, Los Angeles, California.....	\$80,517.00
Totals	\$80,517.00

Continuation of Schedule A.—Blank

Schedule B.—Blank

Schedule C.—Income From Partnerships, and Other Fiduciaries
(See Instruction 5)

Name and address of fiduciary: Estate of Ralph R. Huesman, Deceased	\$ 80,517.00
Total (Enter as item 5, page 1).....	\$ 80,517.00

Schedule D.—Blank

Schedule E.—Blank

Schedule F.—Blank

Schedule G.—Blank

Schedule H.—Blank

Questions

1. Was an income tax return filed for the preceding year? No. If so, to which collector's office was it sent?.....
2. Date estate or trust was created: April 30, 1945.
3. If copy of will or trust instrument and statement required under General Instruction I have been previously furnished, state when and where filed: Copy of Will filed with Fed. Est. Tax Return.

*Decree of distribution to trust dated 4/30/45.

*Copies of all instruments in files of Dempsey, Thayer, Deibert & Kumler, 1104 Pacific Mutual Building, Los Angeles, California.

4. Check whether this return was prepared on the cash or accrual basis.
5. Did the estate or trust at any time during the taxable year own directly or indirectly any stock of a foreign corporation or of a personal holding company as defined in section 501 of the Internal Revenue Code? (Answer "Yes" or "No") No. If answer is "Yes," attach list showing name and address of each such corporation and amount of stockholdings.
6. If return is for a trust, state name and address of grantor: T/W Ralph R. Huesman, Deceased.

Affidavit—Blank

Filed at hearing March 20, 1950.

[Title of Tax Court and Cause.]

STIPULATION

It is hereby stipulated and agreed by and between the parties hereto through their respective counsel as follows:

1. A stipulation of facts was heretofore entered into between the parties and filed in this action in which reference was made on line 15 of page 3 thereof to a copy of an Order authorizing executors to borrow money on unsecured note attached as Exhibit I to said stipulation.
2. That the document referred to in said stipulation as Exhibit I was inadvertently omitted, and a copy of the document referred to as Exhibit H in said stipulation was erroneously attached to said stipulation as Exhibit I.
3. There is attached hereto the document referred to in said stipulation as Exhibit I and is submitted

in lieu of the document attached to said stipulation and marked Exhibit I.

DEMPSEY, THAYER,
DEIBERT & KUMLER,

/s/ H. B. THOMPSON,
Of Counsel.

/s/ CHARLES OLIPHANT, ECC.
Chief Counsel, Bureau of
Internal Revenue.

EXHIBIT I

In the Superior Court of the State of California
in and for the County of Los Angeles

No. 233,009

In the Matter of
The Estate of RALPH R. HUESMAN,
Deceased.

ORDER AUTHORIZING EXECUTORS TO BORROW MONEY ON UNSECURED NOTE

The petition of Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, Executors of the Estate of Ralph R. Huesman, Deceased, for an order to borrow money on unsecured note came on regularly to be heard this 30th day of April, 1945. Proof having been made to satisfaction of the Court, the Court finds that due notice of the hearing of said petition has been regularly given for the period

and in the manner required by Sections 1200 and 1201 of the Probate Code; and no person appearing to contest said petition, the Court, after a full hearing, is satisfied that it is for the advantage of said Estate to make an unsecured promissory note to the Farmers and Merchants National Bank of Los Angeles for the sum of One Hundred Ten Thousand Dollars (\$110,000.00).

It Is Hereby Ordered That Nurma W. Huesman, Fred B. Huesman and Farmers and Merchants National Bank of Los Angeles, as the Executors of the Estate of Ralph R. Huesman, Deceased, be and they are hereby authorized, empowered and directed to borrow from the Farmers and Merchants National Bank of Los Angeles, the sum of One Hundred Ten Thousand Dollars (\$110,000.00), and to execute their promissory note, as such Executors, therefor, without security, said note to be payable in three (3) months from date, with interest at the rate of two per cent (2%) per annum, payable at maturity, and with a provision that said note may be renewed from time to time upon like terms and conditions.

Done in open Court this 30th day of April, 1945.

NEWCOMB CONDEE,

.....,

Judge of the Superior Court.

Received and filed T.C.U.S. January 17, 1951.

The Tax Court of the United States

Docket No. 20164

ESTATE OF RALPH R. HUESMAN, Deceased,
NURMA W. HUESMAN, FRED B. HUES-
MAN, and THE FARMERS AND MER-
CHANTS NATIONAL BANK OF LOS AN-
GELES, Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated March 29, 1951.

Petitioners, during the taxable year, received cash constituting the payment of a bonus owing decedent at the time of his death. Under court order they immediately paid this cash over to trustees who in turn paid it to a beneficiary under the trust as a partial satisfaction of its legacy. The money was included in decedent's estate income tax return under section 126 of the Internal Revenue Code, and then deducted under section 162 of the code. Held, section 126 is a remedial provision enacted for the benefit of a decedent in connection with his final income tax return, and relates to income earned by a decedent but not as yet received at the time of his death; while section 162 refers to income earned by an estate during its administration, and does not apply to items which are income

merely because of section 126. Therefore, the deduction, under section 162, was incorrect.

H. B. THOMPSON, ESQ.,
For the Petitioners.

ROBERT H. KINDERMAN,
ESQ.,
For the Petitioners.

OPINION

Rice, Judge:

The Commissioner determined a deficiency in income tax for the fiscal year ended April 30, 1945, in the amount of \$57,923.50. The sole issue is whether in determining taxable net income of the estate, petitioners were correct in deducting an amount of \$80,517 under section 162 of the Internal Revenue Code.

All of the facts were stipulated, are so found and are incorporated herein.

The return was filed with the collector of internal revenue for the sixth district of California.

Ralph R. Huesman, a resident of California, died testate on May 3, 1944, leaving an estate of about four million dollars. Decedent's will was admitted to probate by order of the Superior Court of Los Angeles, on June 14, 1944. The decedent provided for alternative distributions of his property based upon the size of his estate. Under the terms of the will which became operative, all of decedent's property was placed in trust. Since the estate exceeded

\$250,000, the provisions of the will involved in the instant case are as follows:

Article V.

I give, devise and bequeath all the rest, residue, and remainder of my estate, real, personal and mixed, of every kind and nature and wherever situated, which I may own at the time of my death, and all other property over which I may have any power of disposition (all of said property being hereinafter referred to as the "Trusted Property"), to the Trustees hereinafter named, to have and to hold upon the following trusts and conditions:

E * * *

5. The Trustees shall pay and distribute a sum of money equal to ten per cent (10%) of the Trusted Property as follows: To my friend Dr. Henry M. Rooney, and if he be deceased to his wife, Mrs. May Rooney, the sum of Two Thousand Dollars (\$2,000.00); to my loyal secretary and employee Leonora Zinner, the sum of Two Thousand Dollars (\$2,000.00); and to Mrs. Gregory Haran, my former secretary who rendered very loyal service to me, the sum of Two Thousand Dollars (\$2,000.00); * * * and the balance of said sum of money shall be paid and distributed by the Trustees to the following named organizations and in the proportions as follows: To Loyola University of Los Angeles, Regents' Fund, five-tenths (5/10th); * * *. Such conversion of Trusted Property into money and pay-

ments and distributions made to said organizations shall be made by the Trustees within five (5) years after distribution to the Trustees and shall be made at such time and in such amounts as may be convenient for the Trustees in consideration of the condition of the Trust Estate, and the Trustees may exercise in their sole discretion as to when and in what amounts such payments and distributions shall be made within said period of five (5) years. * * *

At the time of his death, decedent was president of Desmond's, a retail merchandising corporation carrying on business in southern California. There was due and owing decedent from Desmond's at the time of his death, the sum of \$80,517 as a bonus for services rendered by him prior to his death. This amount was included in the Federal estate tax return as part of the gross estate under section 811 of the Internal Revenue Code, as the value of decedent's claim against Desmond's.

On April 10, 1945, the executors of the petitioner estate, in that capacity and their capacity as testamentary trustees, petitioned the appropriate court for instructions, and at the same time filed a petition requesting an order for partial distribution.

In the petition for instructions the following allegations appeared:

VI.

Among the claims filed and allowed is that of Desmond's, a corporation, which has been allowed in the sum of \$30,562.06, representing the balance of mutual account between Desmond's and the decedent, as follows:

Promissory note due Desmond's.....	\$ 80,283.30
Interest on note to date of death.....	3,231.20
Advances on open account.....	27,094.51

Total due Desmond's at date of death	110,609.01
Plus additional interest on note to date of claim	470.05

Total due Desmond's at date of claim	111,079.06
Less Compensation due decedent in form of bonus at date of death.....	80,517.00

Net amount due Desmond's and allowed as a claim.....	30,562.06
---	-----------

* * *

VIII.

* * * One of said beneficiaries is Loyola University of Los Angeles, Regents' Fund, which is entitled to a sum of money equal to approximately 5% of the Trusteed Property, amounting to approximately \$98,000.00.

IX.

Loyola University is an educational institution located in Los Angeles, California. Said institution is in need of cash funds and desires a partial distribution of the bequest in its favor under decedent's will in the amount of said bonus, to wit, the sum of \$80,517.00.

On April 10, 1945, concurrent with the other peti-

tions, the executors requested an order to borrow \$110,000 for three months on an unsecured note.

On April 30, 1945, the court entered its order, ordering the executors to borrow the \$110,000, to pay the same to Desmond's, and to receive from Desmond's the \$80,517. Throughout the orders, the court referred to the \$80,517 specifically as compensation due decedent in the form of a bonus at the time of his death. The executors were ordered to pay this specific sum to the testamentary trustees who in turn were ordered to pay the same specific sum to Loyola University, Regents' Fund, as the ultimate beneficiary under the trust, in partial satisfaction of its legacy, which was approximately \$98,000.

On the same day, April 30, 1945, Desmond's paid the \$80,517 to the executors, who paid it to the testamentary trustees, who in turn paid it to Loyola University, Regents' Fund. At the time the testamentary trustees received and distributed the \$80,517 it constituted the only cash asset of the trust estate. The petitioner estate also borrowed \$110,000 on a three-month unsecured note from The Farmers and Merchants National Bank of Los Angeles (an executor and trustee of the estate) on April 30, 1945. This sum was repaid on July 30, 1945. The \$110,000 so borrowed was applied to pay Desmond's claim against the estate of \$111,079.06.

In all accounting records of the estate, and the trust, the \$80,517 was treated as principal, i. e., as a receipt of, and distribution of, principal.

Under both section 811 (a) of the Internal Reve-

nue Code and section 600 of the California Probate Code, the bonus is considered part of the corpus of the decedent's estate. *Estate of G. Percy McGlue*, 41 B.T.A. 1199 (1940).

In its Federal income tax return for the year ended April 30, 1945, the petitioner estate reported the \$80,517 item as income of the estate under section 126 (a) (1) (A) of the Internal Revenue Code. It deducted \$37,359.89¹ on its 1945 return as the amount of estate tax attributable to the inclusion of the \$80,517 item in the Federal estate tax return, as authorized by section 126 (c) of the Internal Revenue Code and deducted \$80,517 as an allowable deduction under section 162 of the Internal Revenue Code, or deductions totaling \$117,876.89. The applicable provisions are set forth in the margin.²

¹The change of this amount to \$36,514.30 by the respondent is not contested by the petitioner.

²Sec. 126. Income in Respect of Decedents.
(a) Inclusion in Gross Income.—

(1) General Rule.—The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period shall be included in the gross income, for the taxable year when received, of:

(A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;

* * *

(3) Character of Income Determined by Reference to Decedent.—The right, described in paragraph (1), to receive an amount shall be treated, in the hands of the estate of the decedent or any person

The basic question here is whether, as a matter of law, the petitioners are entitled to a deduction under one of the subsections of section 162 of the Code. In determining petitioners' right to a deduction we must look to the provisions of the decedent's will and ascertain his intention with respect to the disposition of his property. Article V of the will provides for the transfer of decedent's residuary estate to trustees under certain trusts and conditions. One of these trusts provided that the trustees should pay and distribute a sum of money equal to five per cent of the Trusteed Property to Loyola University.

who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction by which the decedent acquired such right; and the amount includable in gross income under paragraph (1) or (2) shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

* * *

(c) **Deduction for Estate Tax.—**

(1) **Allowance of Deduction.—**A person who includes an amount in gross income under subsection (a) shall be allowed, for the same taxable year, as a deduction an amount which bears the same ratio to the estate tax attributable to the net value for estate tax purposes of all the items described in subsection (a) (1) as the value for estate tax purposes of the items of gross income or portions thereof in respect of which such person included the amount in gross income (or the amount included in gross income, whichever is lower) bears to the value for estate tax

The trustees were authorized to turn the Trusteed Property into money and make the payments to Loyola University and other named organizations at any time within five years after distribution of the Trusteed Property to the trustees. Article V of decedent's will makes no provision whatsoever for the distribution of any sum of money as income to Loyola University but only for the payment and distribution of a sum of money equal to five per cent of the Trusteed Property (the exact language is 5/10ths of 10% of the Trusteed Property). Our analysis of this portion of the decedent's will con-

purposes of all the items described in subsection (a) (1).

(2) Method of Computing Deduction.—For the purposes of paragraph (1):

(A) The term "estate tax" means the tax imposed upon the estate of the decedent under section 810 or 860, reduced by the credits against such tax, plus the tax imposed upon the estate of the decedent under section 935, reduced by the credits against such tax.

(B) The net value for estate tax purposes of all the items described in subsection (a) (1) shall be the excess of the value for estate tax purposes of all the items described in subsection (a) (1) over the deductions from the gross estate in respect of claims which represent the deductions and credit described in subsection (b).

(C) The estate tax attributable to such net value shall be an amount equal to the excess of the estate tax over the estate tax computed without including in the gross estate such net value.

Sec. 162. Net Income. The net income of the estate * * * shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(a) There shall be allowed as a deduction

vinces us that decedent intended by the hereinabove-quoted portions of Article V to distribute a part of the trust corpus and that he made no provision whatsoever for the distribution of any sum as income.

Petitioners herein have recognized that the bonus item, under section 126, is taxable income to the decedent's estate and the stipulated facts show that they have so reported it. It should also be noted that petitioners have claimed and been allowed a deduction under section 126 (c) because of the estate tax attributable to the inclusion in decedent's gross

(in lieu of the deduction for charitable, etc., contributions authorized by section 23 (o)) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner specified in section 23 (o), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance or operation of a public cemetery not operated for profit;

(b) There shall be allowed as an additional deduction in computing the net income of the estate * * * the amount of the income of the estate * * * for its taxable year which is to be distributed currently by the fiduciary to the legatees, heirs, or beneficiaries, but the amount so allowed as a deduction shall be included in computing the net income of the legatees, heirs, or beneficiaries whether distributed to them or not. As used in this subsection, "income which is to be distributed currently" includes income

estate of the value of the claim against Desmond's of \$80,517.

Up to this point the parties are in agreement about the application of the Code in determining the income tax liability of the decedent's estate. The controversy arises because the petitioners contend that they are also entitled to deduct the \$80,517 paid over to the trustees upon the order of the court, which order refers to the \$80,517 as compensation due decedent in the form of a bonus at the time of his death. It is petitioners' contention that, since they collected the \$80,517 as an income item, it still retained its income character when distributed by the executors.

We have found no case directly in point. A look at the legislative history of section 126 is helpful in determining what effect its addition to the Code

for the taxable year of the estate * * * which, within the taxable year, becomes payable to the legatee, heir, or beneficiary. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year;

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estates, * * * there shall be allowed as an additional deduction in computing the net income of the estate * * * the amount of the income of the estate * * * for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary;

had on section 162. Section 42 of the Revenue Act of 1934 required all income accrued up to the date of death, not otherwise properly includible for such period or a prior period, be included in the income tax return of a decedent for the period in which fell the date of his death. This provision was enacted because the courts had held under prior law that income accrued before death but received by the estate was not income to the estate but a part of corpus. Cf. *Nichols v. United States*, 64 Ct. Cls. 241 (1927), certiorari denied, 277 U. S. 584 (1928); *Commissioner v. United States Trust Company of New York*, 143 Fed. (2d) 243 (CA-2, 1944), certiorari denied, 323 U. S. 727 (1944). Therefore, since neither the estate nor the decedent ever paid income tax on such amounts, until this provision of the Revenue Act of 1934 changed the treatment, such amounts escaped income tax entirely. H. Rept. No. 704, 73rd Cong., 2nd Sess., §§ 42 and 43 (1934) p. 24; Sen. Rept. No. 558, 73rd Cong., 2nd Sess., §§ 42 and 43 (1934) p. 28.

This provision of the Revenue Act of 1934 required the inclusion of the value for services rendered, whether based on agreed compensation or on quantum meruit, in decedent's final return as accrued income. *Helvering v. Estate of Enright*, 312 U. S. 636 (1941); *Pfaff, et al., Executors v. Commissioner*, 312 U. S. 646 (1941). In some instances, such treatment resulted in hardship as, quite frequently, amounts which would have been received over a number of years were returnable in the year

of death thus boosting the income into much higher brackets.

To alleviate such hardship, section 126 of the Code was added by the Revenue Act of 1942 to provide that income accruing to a decedent because of his death was not includible in his final return but was to be treated as income and reported as income by the one receiving the right to such income (usually the estate). Such treatment was for the express purpose of alleviating a hardship and at the same time preventing certain income from escaping income taxation. H. Rept. No. 2333, 77th Cong., 2nd Sess., § 125 (1942) p. 83; Sen. Rept. No. 1631, 77th Cong., 2nd Sess., § 135 (1942) p. 100.

The Claim which decedent's estate had against Desmond's was at all times part of the corpus of decedent's estate. The fact that the Congress saw fit to relieve the hardship to a decedent, from an income tax standpoint, by requiring that the amount collected on such claim be reported as income of the decedent's estate, in no wise affects the character of this asset which was fixed and determined at the date of the decedent's death. The subsequent liquidation of the claim merely converted the form of the asset from a chose in action into cash. When the executors transferred the amount of the liquidated claim to the trustees pursuant to the order of the court, they transferred a part of the decedent's residuary estate to the trustees who were then directed to proceed further with respect to the distribution of the testamentary trust in accordance with the intention of the decedent's will. It was the trus-

tees who made the distribution to the trust beneficiary, Loyola University. The beneficiary received the corpus of the trust and not income of the trust. The trust at that time had no income for our findings show that the \$80,517 was the only cash asset in the hands of the trustee.

Our ultimate conclusion is further strengthened by those cases which held that where capital gains are distributed by an estate, such distributions are not deductible as payment of income under section 162 where either the will or the law of the state having jurisdiction provides that such gains constitute corpus. Cf. Charles Simon, et al., Executors v. Hoey, 88 Fed. Supp. 754 (1949), affd., per curiam, 180 Fed. (2d) 354, (CA-2, 1950), certiorari denied, 339 U. S. 266 (1950); Estate of Henry H. Rogers, 1 T. C. 629, 637, 638 (1943), affd., 143 Fed. (2d) 695, (CA-2, 1944), certiorari denied, 323 U. S. 780 (1944); Weigel v. Commissioner, 34 B.T.A. 237, 239 (1936), affd., 96 Fed. (2d) 387 (CA-7, 1938); Anna M. Chambers, et al., Trustees, 33 B.T.A. 1125 (1936).

In view of the foregoing we hold that the Commissioner correctly denied any deduction under section 162, Internal Revenue Code.

Reviewed by the Court.

Decision will be entered for the respondent.

Served March 29, 1951.

The Tax Court of the United States
Washington

Docket No. 20164

ESTATE OF RALPH R. HUESMAN, Deceased,
NURMA W. HUESMAN, FRED B. HUES-
MAN, and THE FARMERS AND MER-
CHANTS NATIONAL BANK OF LOS
ANGELES, Executors,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, promulgated March 29, 1951, it is

Ordered and Decided: That there is a deficiency in income tax of \$57,923.50 for the fiscal year ended April 30, 1945.

Entered March 30, 1951.

[Seal] /s/ STEPHEN E. RICE,
 Judge.

Served April 2, 1951.

In the United States Court of Appeals
for the Ninth Circuit

No. 20164

ESTATE OF RALPH R. HUESMAN, Deceased,
NURMA W. HUESMAN, FRED B. HUES-
MAN, and THE FARMERS & MERCHANTS
NATIONAL BANK OF LOS ANGELES,
Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION TO REVIEW DECISION OF THE
UNITED STATES TAX COURT

Now come Nurma W. Huesman, Fred B. Huesman and The Farmers & Merchants National Bank of Los Angeles, Executors of the Estate of Ralph R. Huesman, deceased, by H. B. Thompson of Dempsey, Thayer, Deibert & Kumler, their attorneys, and petition the United States Court of Appeals for the Ninth Circuit for a review of the decision of the United States Tax Court rendered and entered on March 30, 1951, in cause numbered 20164 of said court, wherein they were petitioners, and the Commissioner of Internal Revenue was respondent, and in support of their petition respectfully show this Honorable Court as follows:

Venue

The petitioners Nurma W. Huesman and Fred B. Huesman are now and at all times herein material were individuals residing within the judicial circuit of this court. The Farmers and Merchants National Bank of Los Angeles is now and at all times herein material has been doing business with principal place of business located within the judicial circuit of this court. The income tax return of the Estate of Ralph R. Huesman, deceased, for the fiscal year ended April 30, 1945, being the year here in issue, was filed by the executors of said estate in the office of the Collector of Internal Revenue for the 6th Collection District of California in Los Angeles and within the judicial circuit of this court.

The respondent is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States.

Nature of the Controversy

On May 4, 1944, Ralph R. Huesman died testate. By the terms of his will he transferred his residuary estate to trustees to pay certain bequests, among them a bequest to the Regents' Fund of Loyola University. At the time of his death there was owing but as yet unpaid to him as salary or bonus for services rendered to Desmonds, a corporation of which he was president, the sum of \$80,517.00. This sum was paid by Desmonds to the executors of Mr. Huesman's estate on April 30, 1945, and by them in turn, distributed pursuant to the probate court's

order to trustees of the testamentary trust established by testator's will. On the fiduciary income tax return filed by the executors for the fiscal year ended April 30, 1945, said sum of \$80,517.00 was reported as gross income pursuant to section 126 of the Internal Revenue Code and a deduction therefor was taken by the executors in the same amount pursuant to section 162 of the Internal Revenue Code by reason of the distribution they made to the testamentary trust.

The Commissioner of Internal Revenue denied the deduction taken by the executors on account of said distribution and by reason thereof assessed a deficiency of \$57,923.50 to the executors. The United States Tax Court in its decision promulgated March 29, 1951, and entered March 30, 1951, sustained the Commissioner's action. The issue presented on this review therefore is to determine whether the petitioners were entitled to said deduction under section 162 of the Internal Revenue Code on account of the distribution of said sum of \$80,517.00 pursuant to court order to the testamentary trustees under the will of Ralph R. Huesman, deceased.

Court in Which Review Is Sought

Review of the United States Tax Court's decision is sought in the United States Court of Appeals for the Ninth Circuit.

DEMPSEY, THAYER,
DEIBERT & KUMLER,

By /s/ H. B. THOMPSON,
Attorney for Petitioners.

State of California,
County of Los Angeles—ss.

H. B. Thompson, being first duly sworn, deposes and says that he is counsel of record in the above-entitled cause; that as such counsel he is authorized to verify the foregoing petition for review; that he has read the said petition and is familiar with the statements contained therein, and that the statements made are true to the best of his knowledge, information and belief.

/s/ H. B. THOMPSON.

Subscribed and sworn to before me this 24th day of May, 1951.

[Seal] /s/ DOROTHY ERBEN,
Notary Public in and for
Said County and State.

Service of Copy acknowledged.

Filed T.C.U.S. June 4, 1951.

[Title of Tax Court and Cause.]

NOTICE OF FILING OF PETITION FOR
REVIEW OF DECISION OF THE UNITED
STATES TAX COURT

To: General Counsel of The Bureau of Internal
Revenue, Washington, D. C.

Notice is hereby given that Nurma W. Huesman,
Fred B. Huesman, and The Farmers & Merchants

National Bank of Los Angeles, Executors of the Estate of Ralph R. Huesman, petitioners in the above-entitled cause, hereby petition the Court of Appeals for the Ninth Circuit for review of the decision of The Tax Court of the United States in the above-entitled cause entered March 30, 1951. Copy of the Petition to Review Decision of said Court in the above-entitled cause is served herewith.

Dated: June 7th, 1951.

/s/ H. B. THOMPSON,
Attorney for Petitioners.

Service of Copy acknowledged.

Received and filed T.C.U.S. June 18, 1951.

[Title of Tax Court and Cause.]

DESIGNATION OF RECORD

To the Clerk of the Above Court:

You are hereby requested to make a transcript of record to be certified and filed in the United States Court of Appeals for the Ninth Circuit pursuant to a petition for review filed and noticed in the above-entitled cause, and to include in such transcript of record the following:

- (1) Petition, filed September 2, 1948.
- (2) Answer to petition, filed September 28, 1948.
- (3) Motion to amend petition, filed June 7, 1950, and order of same date, granting motion.

(4) Amended petition, filed June 7, 1950.

(5) Written stipulation introduced at hearing held March 30, 1950, as joint exhibit and exhibits thereto attached except Exhibit I.

(6) Written stipulation and Exhibit I thereto attached mailed to the clerk of the above court by the undersigned from Los Angeles, January 15, 1951.

(7) Opinion and decision of the above-entitled court promulgated March 29, 1951, and entered March 30, 1951.

Since the foregoing constitutes the entire record no statement of Points Relied Upon is incorporated herein.

Dated: June 7, 1951.

/s/ H. B. THOMPSON,
Attorney for Petitioners.

Service of Copy acknowledged.

Received and filed T.C.U.S. July 5, 1951.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 12, inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the "Designation of Record on Review" in the proceeding before The Tax Court of the United States entitled "Estate of

Ralph R. Huesman, Deceased, Nurma W. Huesman, Fred B. Huesman, and The Farmers & Merchants National Bank of Los Angeles, Executors, Petitioners, v. Commissioner of Internal Revenue, Respondent," Docket No. 20164 and in which the petitioners in The Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 5th day of July, 1951.

/s/ VICTOR S. MERSCH,
Clerk, The Tax Court
of the United States.

[Endorsed]: No. 13006. United States Court of Appeals for the Ninth Circuit. Estate of Ralph R. Huesman, Deceased, Nurma W. Huesman, Fred B. Huesman and The Farmers & Merchants National Bank of Los Angeles, Executors, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of the Tax Court of the United States.

Filed July 9, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13006

Estate of RALPH R. HUESMAN, Deceased,
NURMA W. HUESMAN, FRED B. HUES-
MAN, and THE FARMERS & MERCHANTS
NATIONAL BANK OF LOS ANGELES,
Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

POINTS RELIED ON AND DESIGNATION
OF RECORD

To: The Clerk of the Above-Entitled Court:

A. Points Relied Upon:

The following constitute the points upon which appellants rely for reversal of the United States Tax Court's decision entered in the above-entitled matter:

I.

The Court erred in holding as a matter of law that appellants were not entitled in the computation of taxable net income for the taxable year 1945, to deduct from gross income under Section 162 of the Internal Revenue Code, the sum of \$80,517.00 distributed by them to the Testamentary Trustees during the fiscal year ended April 30, 1945.

II.

The Court erred as a matter of law in concluding that the sum of \$80,517.00 owed Ralph R. Huesman at the time of his death as bonus and paid by Desmond's to the executors of his estate was within the meaning of Section 126 of the Internal Revenue Code an item of gross income but was not an item of gross income within the meaning of Section 162 (a).

III.

The Court erred as a matter of law in concluding that the Will of Ralph R. Huesman, deceased, did not authorize the executors of his estate to distribute the sum of \$80,517.00 as income, said sum constituting a bonus due him at the time of his death for services rendered to Desmond's paid to the executors of his estate and distributed by them during the fiscal year ended April 30, 1945.

IV.

The Court erred in holding that for the fiscal year ended April 30, 1945, the Estate of Ralph R. Huesman, deceased, was liable for Federal income tax in the amount of \$57,923.50 on account of the inclusion within its taxable net income of the sum of \$80,517.00 bonus received and distributed by the executors during said year, whereas if any entity was taxable on account of said item, it was the Testamentary Trust under the Will of the said Ralph R. Huesman.

V.

The Court erred in failing to find that during the fiscal year ended April 30, 1945, the executors

of the Estate of Ralph R. Huesman, deceased, paid or permanently set aside the sum of \$80,517.00 of gross income of the estate pursuant to the terms of decedent's Will to be used exclusively for religious, charitable, scientific, literary and educational purposes.

VI.

The Court erred in deciding that for the fiscal year ended April 30, 1945, the Estate of Ralph R. Huesman, deceased, was liable for a deficiency of Federal income tax amounting to \$57,923.50, or any other sum.

VII.

The Court erred in failing to find that appellants made an overpayment of Federal Income Tax for the taxable year 1950 in the amount of \$71,459.35.

B. Designation of Record:

The following portions of the record are deemed by the appellants material to the consideration of the appeal in the above-entitled cause:

	Document No.
Docket Entries.....	1
Petition	2
Answer	3
Motion to Amend Petition Filed June 7, 1950—Granted.....	4
Amended Petition Filed June 7, 1950..	5
Stipulation of Facts With Exhibits A thru H and J Attached Thereto.....	6
Stipulation re Exhibit I and Exhibit I Attached	7

Document No.

Opinion	8
Decision	9
Petition for Review With Proof of Ser- vice Thereon	10
Proof of Service of Petition for Review	11
Designation of Record With Service Thereon	12
Certificate and Seal.....	..
Points Relied On and Designation of Record

Dated:, 1951.

/s/ T. R. DEMPSEY,

/s/ BEN THOMPSON,

Attorneys for Petitioners.

Service of Copy acknowledged.

[Endorsed]: Filed July 25, 1951.

